# TRANSCRIPT OF RECORD.

## SUPREME COURT OF THE UNITED STATES.

**OCTOBER TERM, 1886.**

No. 1347. ~~705~~ ~~581~~ ~~299~~ 33

THE COVINGTON STOCK YARDS COMPANY, APPELLANT,

*vs.*

CHARLES W. KEITH AND EDWARD W. WILSON, PARTNERS AS KEITH AND WILSON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

**FILED FEBRUARY 26, 1887.**

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1 Proceedings of the circuit court of the United States for the district of Kentucky, at a regular term begun and held at the Federal court hall, in the city of Covington, on Monday, December 6th, A. D. 1886, and of our Independence the 111th year.

Present: Honorable Howell E. Jackson, judge of the United States circuit court for the sixth judicial circuit.

GEORGE T. BLISS and ISAAC E. GATES, Trustees,
*vs.*
THE KENTUCKY CENTRAL RAILROAD COMPANY, &c.

Be it remembered that heretofore, to wit, on the 18th day of June, A. D. 1886, came Charles W. Keith and filed his certain petition and affidavit herein; which said petition and affidavit is in words and figures as follows, to wit:

*Petition for Rule.*

United States Circuit Court, District of Kentucky.

GEORGE T. BLISS and ISAAC E. GATES, Trustees, Complainants,
*against*
THE KENTUCKY CENTRAL RAILROAD COMPANY, &c., Defendant.

2 The petitioner, Chas. W. Keith, says he is a resident of the city of Covington and State of Kentucky; now and for many years last past has been engaged in the business of buying and selling live stock on commission, as well as on his own account.

That the great bulk of business done by him is in live stock brought to the city of Covington upon the Kentucky Central railroad, and received by him, as well his own stock as that consigned to him by others for sale on commission, at and through the lots and yards of the Covington Stock-Yards Company, a corporation created under the general laws of Kentucky, without cost or charge to him or his consignees other than the customary freight charges for the transportation over said road.

He says the said Covington stock-yards are located on the west side of Washington street, between Fifteenth and Sixteenth streets, in the city of Covington, and connected with the tracks of the said railroad running in said Washington street by platforms and chutes for loading and unloading such stock, and the said railroad company has no other depot for receiving or discharging live stock on or from its trains at the city of Covington provided with the necessary platforms and chutes.

Petitioner says that on or about the 19th day of November, 1881, the said Kentucky Central Railroad Company and the said Covington Stock-Yards Company entered into an agreement to con-

3 tinue in force for fifteen years, whereby it is claimed that the said railroad company stipulated to and with said stock-yards company that it would not establish any other depot at Covington for receiving or discharging live stock transported, or to be transported, over its roads than the lots or yards of the said stock-yards

company, and none other has been established by said railroad company.

He says that the business of said stock-yards company is to receive, care for, and feed for pay, and to sell on commission such live stock as may be consigned to it, and also to supervise the shipping of live stock over and upon said railroad, and to provide bedding for stock so shipped by it, when required, for pay, and in which business they make large profits.

One of the stipulations in said contract is that the said railroad company is to pay to the said stock-yards company a certain and sufficient fee for unloading and passing through its said yards and lots, free from charge to the owner or consignee, all stock brought to said depot owned or consigned to others than said stock-yards company, and to pay the said company also a certain and sufficient fee for receiving and loading such stock on the cars of said railroad company, to be transported from the city of Covington to other points reached by said road and its connections, without additional charge to the owner or shipper above the customary freight charges for the transportation.

4 The petitioner says he is the proprietor of certain stock lots and yards in the said city of Covington, lying immediately west of the lots and yards of the said Covington company and separated therefrom only by Russell street, in said city, sixty feet in width; that he is provided with all the necessary means of receiving, feeding, and caring for such live stock as he may purchase or as may be consigned to him by others for sale at the Covington market, and has been accustomed heretofore to use said lots and yards in the prosecution of his said business, to wit, since the 1st of March, 1886, out of which he has made profit.

Before that date his said lots were occupied and used by said company under a lease from petitioner in their said business.

The said stock-yards company did not at any time from the date of the said contract with said railroad company, until about the 8th day of May, 1886, charge petitioner any yardage or other fees for passing stock through the said lots to or from said railroad, when on that day said stock-yards company notified this petitioner that on and after that date yardage would be charged on all stock unloaded at the Covington stock-yards and taken to petitioner's yards.

Petitioner states that on the 28th day of January, 1886, one Geo. T. Bliss and Isaac E. Gates filed their certain bill in

5 chancery in this honorable court against the said Kentucky Central Railroad Company for the foreclosure of a certain mortgage or deed of trust to them executed by said company to secure the payment of certain bonds of the said company therein set out and described for a large amount of money, and on the day following obtained therein an order appointing H. E. Huntington receiver of said company, and placing in his hands its said road and all its effects, with directions to operate said road until the further order of said court, and the said receiver immediately executed bond and took possession of said road, and was, on and before the said 8 day of May, and at all times since, and now is, in the possession

and control of said road, operating it under the orders of this court as aforesaid.

Petitioner says that immediately upon the receipt of said notice from said stock-yards company requiring the payment of yardage on stock received at said yards and taken to petitioner's yards, he protested against the same and made application to said receiver to provide some other suitable place at which stock owned by or consigned to petitioner or shipped by him and passing over said road might be delivered to him without the payment of charges other than the customary freight charges for the transportation of
6 live-stock, which the said receiver, for the space of saveral days, declined and refused to do, but at length the said receiver did deliver five or six different assignments of stock to petitioner, at the general freight depot in the city of Covington, at the terminus of said railroad, without having any permanent or safe means of loading or unloading such stock. Thereafter the said receiver agreed with petitioner that if petitioner would himself provide a platform and chute adjacent to the switch from which the said stock-yards company receive live-stock from said road he would then deliver consignments of stock to petitioner at such platform so to be provided by petitioner; and petitioner says he at once purchased a lot of ground at the point agreed and erected suitable chute and platform in conformity to the agreement and with the approbation and consent of the said receiver, and the same was ready for the reception of stock on the 4th day of June inst., when, in the suit of the said stock-yards company, in the Kenton chancery court in Kentucky, this petitioner was enjoined from the erection or use of said chute and platform, and also from receiving stock from the said railroad consigned to him elsewhere in Covington than through the yards of said company. In the same suit the said receiver
7 was sued, but no injunction was obtained against him; nevertheless the said receiver, pretending and, perhaps, believing, that he was also enjoined, on the following — caused the platform so erected by petitioner to be torn up and rendered unfit for use, and the petitioner has not been able to use the same.

He says that on the 14 inst. the said Covington stock-yards discontinued its said suit in the said Kenton chancery court against petitioner and said receiver, and said injunction is not now in force, but has been abandoned; nevertheless the said receiver will not deliver to your petitioner stock consigned to him, except through the yards of said stock-yards company, and he says he is in almost daily receipt of consignments of live stock, all of which has been against his protest delivered into the custody and keeping of the said stock-yards company in their said yards, and petitioner has been unable to get the possession of said stock without the payment of lotage as aforesaid to said company, and the said receiver, though often requested since said injunction was abandoned, through his agent charged with the supervision of that matter, has refused to deliver to the petitioner stock consigned to him as aforesaid except through said company's stock-yards, all of which, as petitioner conceives, is

contrary to the duty and obligation of the said railroad company as a common carrier and of said receiver in charge of the affairs of said company under the orders of this court, and the same is exceedingly onerous and burdensome to your petitioner and his said business.

Wherefore he prays that a rule may issue herein against said receiver requiring him to appear at an early day to be named by the court to show cause why he will not deliver to the petitioner all live stock owned by him or consigned to him and brought over the said Kentucky Central railroad to the city of Covington, at some convenient and suitable place outside of the lots or yards of the said Covington Stock-Yards Company, free from other than the customary freight charges for transportation thereof over said road, which your petitioner is and has been at all times ready, willing, and able to pay, and as in duty bound will ever pray.

O'HARA AND BRYAN,
*For Petitioner.*

The petitioner, Charles W. Keith, says he believes the statements of the foregoing petition are true so far as made on information derived from others, and so far as made of his own knowledge are true.

C. W. KEITH.

Sworn to before me by C. W. Keith this 17th day of June, 1886.

[SEAL.]

R. K. TARVIN,
*Notary Public.*

And on the same day, to wit, on the 18th day of June, A. D. 1886, the following order [was] entered herein, viz:

GEORGE T. BLISS and ISAAC E. GATES, Trustees,
*vs.*
THE KENTUCKY CENTRAL RAILROAD COMPANY.

Came Charles W. Keith, by O'Hara & Bryan, his attorneys, and filed his petition, duly verified, and thereupon moved the court to grant him a rule against H. E. Huntington, receiver herein, to show cause why he shall not be required "to deliver to said Keith such live stock as shall be transported on said Kentucky Central railroad to the city of Covington, Kentucky, owned by or consigned to him, outside of the yards or pens of the Covington Stock-Yards Company, without cost or charges other than the customary transportation charges."

The court being sufficiently advised thereof, it is ordered that a rule do issue against said receiver requiring him to show cause, if any he hath or can, on the 21st day of June inst., at four-and-a-half o'clock p. m., at chambers, in the city of Cincinnati, Ohio, at the court-house, why he should not deliver to the petitioner, Charles W. Keith, all live stock owned by him or consigned to him and brought to the city of Covington upon said Ken-

tucky Central railroad, either at and through the yards and pens of the Covington Stock-Yards Company, free from cost to him or his consignors therefor, or to deliver all such stock to said Keith at the platform and chute adjacent to and outside of said yards, provided by him, connected with said railroad track and trains thereon. A copy of this order shall be delivered to the receiver at least two days before the hearing.

And on a day following, to wit, on the 21st day of June, A. D. 1886, the following order [was] entered herein, to wit:

GEORGE T. BLISS and ISAAC E. GATES, Trustees,
*against*
THE KENTUCKY CENTRAL RAILROAD COMPANY, &c.

This cause being heard upon the petition of C. W. Keith against, the receiver herein for a rule to show cause, &c., came the petitioner by counsel, Messrs. O'Hara and Bryan; came also the respondent, by his attorney, T. F. Hallam, Esq., and came the bondholders of the first and second mortgage bonds, by their counsel, W. M. Ramsey. Whereupon said respondent, by his attorney, filed a response to the rule herein against him and moved the court that he be given
11 further time in which to file additional response and to present his case before the court.

The court being advised, it is considered that said motion prevail, and respondent is given until to-morrow, June 22, at 12 m., at which hour said motion will be disposed of at chambers, in Cincinnati, Ohio.

The response of the receiver mentioned in the foregoing is in words and figures as follows, viz:

Circuit Court of the United States for the Sixth Circuit, District of Kentucky.

GEORGE T. BLISS and ISAAC E. GATES, Trustees, Complainants,
*vs.*
THE KENTUCKY CENTRAL RAILROAD COMPANY, &c., Defendant.

The respondent, H. E. Huntington, receiver, for response to the rule upon him, issued herein at the instance of one Charles W. Keith on the eighteenth day of this month, to show cause, as therein set forth, respectfully submits to the honorable judges of this court—

First. Whether the said relator, Charles W. Keith, ought to be admitted to prosecute his said complaint against this respondent by summary proceedings or otherwise than by suit regularly conducted, upon leave first had of the court, and directed against all persons interested in the event of the same.

12 Second. That the Covington Stock-Yards Company named in the said complaint of Charles W. Keith is, by reason of the facts hereinafter set forth, greatly interested in the event of said complaint, and ought to be made a party to any proceeding prose-

cuted concerning the subject-matter of said complaint, so that its interests therein may not be jeopardized without its day in court.

Third. That before the period from the fourth to the fourteenth day of this month, during which time a certain order of injunction, issued out of the Kenton chancery court of Kentucky in the suit mentioned in said Keith's complaint herein, was pending, this respondent never refused to deliver to or receive from said Keith any live stock at any other place in the city of Covington than the yards of said Covington Stock-Yards Company, but at all other times theretofore received and delivered same at another place in said city, free of any charge other than the customary and reasonable railway charges for carrying, to wit, at the general freight depot in said city, but same was greatly inconvenient to the operation of said railway.

Fourth. That it is and always has been necessary, to the proper and profitable operation of the Kentucky Central railroad, that there should be maintained in the city of Covington, in addi-
13 tion to a passenger and general freight depot, one depot conveniently located and equipped for the receipt and shipment of live stock, and that said railroad cannot be properly, profitably, or conveniently operated with a succession of such live-stock depots requiring many stoppages of trains or with more than one such depot. And respondent further says that the only ground from which he has excluded said Keith from constructing chutes and platforms, as charged in the relation of said Keith, is the right of way of said railroad company, and is necessary and indispensable to the running [of] its trains, and such running would be greatly obstructed by such chutes and platforms and by the stand of cars thereat for loading and unloading.

Fifth. This respondent further says that he has no knowledge nor sufficient information to found a belief upon as to any of the matters or things set forth in said Keith's complaint as to whether or not said Covington Stock-Yards Company has made any discrimination or undue charges against said Keith, and he submits that such matters and things, if they exist, are properly the subject only of controversy between said Keith and said stock-yards company without requiring this respondent to be at the pains or expense of litigating same.

And he further says that on the nineteenth day of Novem-
14 ber, in the year eighteen hundred and eighty-one, said railroad company, finding it necessary to establish such special depot for live stock for the convenience of such of the general public as might desire to use it and pay its charges in preference to receiving and shipping at the general freight depot without such charges, and deeming it impracticable to establish more than one such special depot, and finding it more advantageous to itself to cause such special depot to be erected and maintained by another than itself, entered into a certain contract with the said Covington Stock-Yards Company that, in consideration of the erection by said stock-yards company and the maintenance and operation by it for fifteen years then next ensuing of such depot on the grounds of said stock-yards company, with sufficient facilities for receiving, shipping,

keeping, feeding, and caring for all live stock shipped to or from Covington, and for the further consideration that said stock-yards company would collect for said railroad company all its freight charges upon live stock shipped to or from said depot, and other valuable considerations, the said railroad company contracted to and with said stock-yards company that during said term it would not permit any other person to construct any depot, chute, or platform upon its right of way for receiving or shipping live stock, but said contract did not contain any stipulation (as is alleged in
15 the complaint of said Keith) that said railroad company was to pay any fee whatever.

And respondent says that immediately upon the execution of said contract the said stock-yards company did construct such depot and yards, chutes and platforms, and, respondent is informed and believes, therein expended more than sixty thousand dollars, and entered upon the discharge of its obligations under said contract and has always performed the same without discrimination or undercharges, and is still able, ready, and willing so to do, but will be damaged and injured in a sum not susceptible of exact or approximate estimation, but [it] will be more than ten thousand dollars in amount, if said contract be not kept on the part of said railroad company.

Respondent further says that he is informed and believes that said stock-yards company, in good faith, began the suit mentioned in said Keith's complaint to fully settle and determine the right of all the parties involved in the question herein, and had named this respondent and said railroad company, as well as said Keith, as parties thereto, and in good faith made application to this court before Hon. John W. Barr for leave to take out process and prosecute said suit against this respondent, but said leave was denied for the
16 reason that it was deemed that this court was the only proper one wherein to institute such action; and thereupon said suit in the State court was discontinued, and respondent is informed and believes with the intention on the part of said stock-yards company of instituting such action in this court so soon as could conveniently be done, and that same will be so done.

This respondent therefore prays that the rule against him be discharged, with his costs.

HALLAM & MYERS,
*Sol'rs for Respondents.*
WM. M. RAMSEY,
*Of Counsel.*

UNITED STATES OF AMERICA, } ss:
*Southern District of Ohio,* }

H. E. Huntington, above named, says that the matters and things hereinabove set forth are true, except as to such as are stated on information and belief, and that as to those he believes them to be true.

H. E. HUNTINGTON.

Subscribed and sworn to before me by H. E. Huntington this 21st day of June, 1886.

JOS. C. FINNELL,
*U. S. Clerk.*

And on the 22nd day of June, A. D. 1886, the receiver filed an additional response; which said additional response is in the words and figures as follows, to wit:

17 *Further Response of Receiver.*

United States Circuit Court, District of Kentucky.

GEO. T. BLISS *et al.*
*vs.*
THE KENTUCKY CENTRAL RAILROAD COMPANY.

For further response the said H. E. Huntington, receiver, says that the Covington Stock-Yards Company is not empowered by its articles of incorporation to sell live stock on commission or otherwise, and has never attempted so to do, but only to receive, feed, and care for on equal terms the live stock of all others who desire such service.

H. E. HUNTINGTON.

Subscribed and sworn to before me by H. E. Huntington, receiver, this 22d day of June, 1886.

JOS. C. FINNELL, *Clerk.*

And on the same day, to wit, on the 22d day of June, A. D. 1886, the following order [was] entered herein, viz:

GEORGE T. BLISS and ISAAC E. GATES, Trustees,
*vs.*
THE KENTUCKY CENTRAL RAILROAD COMPANY, &c.

Came Chas. W. Keith, by O'Hara & Bryan, his attorneys, and H. E. Huntington, the receiver herein, by his attorneys, Hallam and Myers and Wm. M. Ramsey, and further hearing the receiver's response to the rule granted on motion of said Keith on a former day, and the court being sufficiently advised thereof, it is now ordered and adjudged, upon the said receiver's response to said
18 rule, that the said receiver do henceforth, until the further order of the court, deliver to the said Keith all live stock owned by him or consigned to him and transported to the said city of Covington on the said Kentucky Central railroad, and to receive from him for shipment over said road all such live stock as he shall offer for shipment, at some convenient point on the line of said road, in the city of Covington, upon the payment by said Keith of all the customary charges for the transportation of said stock, unless the same shall have been paid by others and without the addition of any charges for lotage or otherwise accruing after the said stock shall have been discharged from the cars of said railroad company.

Said delivery and receipt may be at the depot already established by said company for the delivery and receipt of live stock in the yards of the Covington Stock-Yards Company or at the platform erected by said Keith on his own land, near the said Covington stock-yards, or at any other convenient and suitable point to be provided by the said receiver or by said Keith in case the receiver shall fail to so provide. The receiver shall keep an account of the stock delivered to said Keith under this order, so that at any future time, if the court should so order, there may be an accounting between said Keith and the receiver of such matters relating thereto as the court shall order.

19 It is further ordered that said Keith shall remove any such stock as may be delivered to him in said Covington stock-yards without delay. It is further ordered by the court that the Covington Stock Yards Company shall have leave, and is hereby granted leave, to file an intervening petition herein making the Kentucky Central Railroad Company and the said Chas. W. Keith parties thereto, requiring the said parties to litigate the questions between them touching the validity of the said agreement between said railroad company and said stock-yards company, and if the said intervening petition shall be filed, the court reserves the right then to make a further order requiring said Keith and the said stock-yards company to give several bonds to respond in damages to any party injured by the continuance of this order after the filing of such intervening petition if the same shall appear to be proper.

On the 26th day of June, A. D. 1886, came the Covington Stock-Yards Company and filed its interpleader herein; which said interpleader is in words and figures as follows, viz.:

*Interpleader of Covington Stock-Yards Co.*

United States Circuit Court, Sixth Circuit, District of Kentucky.
In Equity.

GEO. T. BLISS *et al.*, Complainants,
*versus*
THE KENTUCKY CENTRAL RAILROAD CO., Defendant.

20 The Covington Stock-Yards Company having leave of this honorable court to intervene for its own interest in this cause, upon an information styled petition, of Charles W. Keith against H. E. Huntington, receiver of the Kentucky Central Railroad Company, now comes and for such interpleader says it is a corporation duly organized under the general statute law of Kentucky for the purpose of conducting a stock-yards business in the city of Covington, Kentucky, and therein, for profit, to receive, ship, house, feed, and generally to care for the live stock of all others shipped to or from said Covington, but not to sell or buy any live stock, or to transact any business other than as aforesaid; that it immediately in good faith undertook to transact its said business at reasonable

and equal rates for all applicants and has always since so done and is ready, able, and willing now and always so to do; that thereupon, on the nineteenth day of November, in the year eighteen hundred and eighty-one, it entered into a certain contract with the defendant, The Kentucky Central Railroad Company, whereby it was mutually agreed and contracted that for the term of fifteen years thence next ensuing the said stock-yards company should and would, as to all live stock carried over said railroad to said city, faithfully perform said public duties, and thereto should and would provide and maintain sufficient and suitable yards, equipments,
21 and facilities at a point on the line of the said railroad between Washington and Russell and Fifteenth and Sixteenth streets, in said city, and that in consideration thereof, and for other considerations therein expressed, the said stock-yards company should, during said term, have the sole and exclusive right and privilege of constructing or using upon the right of way of said railroad company in said city any depot, platform, or chute for the loading or unloading of live stock at said city; that thereupon the said stock-yards company did, at a cost to it of sixty thousand dollars, construct at said point such stock-yards, with depot platforms and chutes, upon the right of way of said railroad company connecting therewith, and always performed, and is and will always be able, ready, and willing to perform, every obligation by it stipulated to be performed on its part by said contract and every obligation incumbent on it by its general duty to the public; that thereafter, as set forth in the said petition of Charles W. Keith, the said H. E. Huntington became the receiver in this cause, and that on or about the first day of June, in this current year, the said Charles W. Keith, well knowing the premises, but intending to injure the said stock-yards company in its rights under said contract, began, with objection from said receiver, to construct at said point adjoining the said depot platforms and chutes and upon said
22 right of way other and competing depots, platforms, and chutes for the reception and shipment, unloading and loading of live stock carried for others upon said railroad, but was thereafter by said receiver prevented from completing —, and thereupon began his proceeding herein upon the said petition to compel said receiver, in violation of said contract, to permit him to enter upon and occupy and use said right of way for said purpose.

And the said stock-yards company says that, by permitting said Keith to so occupy or use said right of way it will be injured and damaged in its rights under said contract in a sum of money not susceptible of exact or approximate ascertainment, but which will be more than ten thousand dollars in amount, and that it is remediless therefor at the common law. It says further that its said depot is at the most convenient place therefor in said city, and is sufficient and convenient for all persons shipping and receiving live stock on said railroad, and is convenient and necessary to the proper operation of said road, and that no other depot is necessary or convenient to the operation of said road, except the passenger depot and the general freight depot theretofore established for all manner of freight.

It denies that it has ever discriminated or made undue charges against said Keith or any person, and it adopts as part
23 hereof, all the allegations in the response of said receiver to the rule issued on said Keith's petition, and prays that same be discharged, and for its costs and charges herein expended.

HALLAM & MYERS,
*Sol'rs for Cov. Stock-Y'ds Co.*

UNITED STATES OF AMERICA, } *ss:*
*District of Kentucky,* }

W. A. Peter says he is secretary and superintendent of the Covington Stock-Yards Company, and that the statements of the foregoing pleading- are true.

W. A. PETER.

Subscribed and sword to before me by the said W. A. Peter this 6th day of July, 1886.

JOS. C. FINNELL, *Clerk*,
By CHAS. Y. MAY, *D. C.*

And on the 3rd day of July, A. D. 1886, the following order [was] entered herein, viz:

GEORGE T. BLISS and ISAAC E. GATES, Trustees,
*vs.*
THE KENTUCKY CENTRAL RAILROAD COMPANY, &c.

This day came Chas. W. Keith, by his attorneys, Messrs. O'Hara & Bryan, and filed his affidavit herein, and thereupon moved the court to grant him a rule against H. E. Huntington, receiver, to show cause, if any he hath, why he has not obeyed the order of court entered herein June 22, 1886, in regard to the matters mentioned in the affidavit now filed.

24 The court being sufficiently advised, it is ordered that a rule issue, and same is now issued against said H. E. Huntington, receiver, requiring him to show cause, if any he hath or can, on Wednesday, the 7th day of July, A. D. 1886, at 10 o'clock a. m., at judge's chambers, custom-house, city of Louisville, why he has not obeyed said order of court as aforesaid.

The affidavit mentioned in the foregoing order is in words and figures as follows, viz:

*Affidavit of C. W. Keith.*

United States Circuit Court, District of Kentucky.

GEO. T. BLISS & ISAAC E. GATES, Complainants,
*against*
THE KENTUCKY CENTRAL RAILROAD Co., Defendant.

Affiant, Charles W. Keith, says heretofore he filed herein his certain petition duly verified, which he now refers to and asks that the same be read as a part of this affidavit, and upon his motion a rule

was awarded against H. E. Huntington, receiver herein, requiring him to show cause why he should not be required to deliver live stock owned and consigned to him and brought to the city of Covington over said Kentucky Central railroad as in said petition set forth and demanded.

The said receiver responded to said rule, and on the 22d June inst., on consideration of said response, which affiant also asks may be read as part hereof, his honor Judge Jackson ordered that
25 until the further order of the court the said receiver should deliver to affiant "all live stock owned by him or consigned to him and transported to the city of Covington on the said Kentucky Central railroad, and to receive from him for shipment over said road all such live stock as he shall offer for shipment, at some convenient point on the line of said road in the city of Covington, upon the payment by affiant of all the customary charges for the transportation of said stock, unless the same shall have been paid by others, and without addition of any charges for lotage or otherwise accruing after the said stock shall have been discharged from the cars of said railroad company. Said delivery and receipt may be at the depot already established by said company for the delivery and receipt of live stock in the yards of the Covington Stock-Yards Company or at the platform erected by affiant on his own land, near the said Covington stock-yards, or at any other convenient and suitable point to be provided by the said receiver, or by affiant, in case the receiver fail- to so provide."

Affiant says that said receiver has not since the making of said order provided any other suitable or convenient place for the receipt or delivery of live stock transported or to be transported on said road other than the said depot in the Covington stock-yards, and affiant says that the depot in the said Covington stock-yards is the only depot for live stock ever used or established for that pur-
26 pose by said K'y Central railroad or said receiver at Covington.

Affiant says that said receiver, in response to said rule, stated that on the 19th November, 1881, the said Kentucky Central Railroad Company had entered into a contract in writing with the said Covington Stock-Yards Company to continue for fifteen years, in which the said railroad company bound itself to deliver all live stock brought by it to Covington into the lots of said stock-yards company, and would not establish or allow any other depot to be established on its right of way in the said city of Covington for the receipt of live stock during said period.

Affiant says the object and effect of said contract and delivery of stock by the railroad company into the lots of the said stock-yards company was and is that said last-named company may have the exclusive right to charge lotage upon all stock so delivered and passing through the said yards or lots, except, as affiant says, is provided in said contract; that the said railroad company shall pay to the said stock-yards company for every car-load of stock so delivered into said yards, and every car-load of stock received from said yards, the sum of sixty cents, and said payment has been made

by said R. R. Co., so that all persons owning or to whom such stock is consigned, not desiring to keep said stock in said yards for
27 sale, might pass through said lots from the cars without having to pay lotage to said stock-yards company, though the said receiver did not in his response set out said latter provision, nor did he file the contract or a copy of it.

Affiant says that at all times since the making of said contract anterior to the 8th day of May last past the said railroad company has delivered all live stock brought on its road to the city of Covington into the yards of said stock-yards company, and the latter has passed them through to the public street when required by owners or consignees, not desiring to retain them in said yards for keep- or sale, without charging lotage therefor. Since that date the said stock-yards company has demanded and coerced the payment of lotage on all such stock so passing through their said yards going to affiant's yards, but all other stock so passing through have been allowed to do so free of such lotage charges.

Affiant says before the making of said contract between said companies he was the proprietor and still is of stock-yards and lots situated near by those of the said Covington Company, which he was and is now accustomed to use in his business of live-stock dealer and commission broker, out of which he has and does make profit by keeping and feeding such stock as is owned by him or consigned to him by others for
28 sale, and he has heretofore done quite an extensive business, having a large number of customers in Kentucky, within reach of said Covington market, who send their stock to said city of Covington by said Kentucky Central railroad, which said lots were used by the said Covington Stock-Yards Company, under lease from affiant, from about the date of said contract up to the 1st of March last. Since said last-named date he has been allowed to and has received all stock shipped to him on said road and delivered at said stock-yards without paying lotage, and has taken the same to his own lots for keep- and sale until as hereinbefore stated.

He says, on the 8th day of May last past, the superintendent of said stock lots notified him that on and after that date lotage would be charged by said company on all stock going from the yards of said company to affiant's said yards.

He says that upon the receipt of said notice he remonstrated with said receiver, protesting against the requirement of such charges as well as the discrimination against affiant's lots and his business, and after having delivered several lots of stock to affiant at the main freight and passenger depot in the city of Covington, which was found very inconvenient to affiant, as well as said receiver, in the conduct of the business of said railroad company, and al-
29 together unsuitable for that purpose, not having any fit platform, or chutes, or lots, it occur-ing not infrequently that the live-stock trains on said road arrive at said city in the night time, and the stock, if not discharged at the depot at the stock-yards, were obliged to be kept in the cars standing on the track many hours before the trains, by reason of the crowded condition of the

tracks at the said city depot, could be brought in and the stock discharged, the said receiver agreed with affiant that if affiant would provide suitable platform and chute adjacent to the live-stock switch from which the stock received at the said Covington stock-yards was discharged on a lot designated on the north of the stock-yards, and which did not then belong to affiant (but which on the faith of said agreement he at once purchased) he, the said receiver, would deliver all such stock as affiant might purchase or might be consigned to him and coming over said road, and receive for shipment all such stock as he might offer at his said platform, and affiant having purchased said lot did at once erect a suitable platform and chute thereon and the same is now intact and ready for use, except a portion of the platform has been by the said receiver's order torn away, but which affiant is ready and willing to replace at a moment's notice, when the same will be fit for use and in all respects
30 as convenient to the said railroad company and as suitable as the yards of the said Covington Company; and the said receiver was notified of the erection of said platform and chute and requested to deliver affiant's said stock to him at that place, which he refused to do.

Affiant says that said receiver has delivered one consignment of stock to him since the making of said order by his honor Judge Jackson at and through said Covington stock-yards without charge of lotage, but on other stock consigned to affiant's said yards lotage has been required and paid, but the said receiver has to-day notified affiant that he will hereafter deliver stock to him as required by said order at the said city depot.

Affiant says that a material part of his business as a live-stock commission broker is receiving at Covington stock brought to that place by the Kentucky Central Railroad Company from points along its own road as well as like stock received by it from the Louisville & Nashville road at South Covington, and shipping the same east by the Kentucky Central railroad to its junction at South Covington with and thence by the L. & N. railroad and its connections.

Affiant says that by said contract between said railroad company and said stock-yards company the latter is constituted the
31 agent of the former for the delivery and receipt of all live stock brought to said depot, and for the collection of the transportation charges due thereon, and has ever since so acted and is now acting as such agent of the receiver.

Affiant further says that the said receiver and the said stock-yards company have combined and co-operated for the purpose of evading compliance with said order by said receiver and by means of control-ing the shipment of stock on said road to the injury and detriment of affiant's said business.

The said receiver, as affiant is informed, has instructed his station agents along the line of said railroad not to receive for shipment or to bill live stock to affiant's said stock-yards, but in all cases to bill such stock to the Covington stock-yards or to the said city depot, and affiant says that the delivery of and receipt of stock by said receiver to affiant at the said city depot is a violation of the true

intent and meaning of said order, by reason whereof the said receiver is in contempt of the court in that regard, and affiant prays that a rule be awarded against said receiver to show cause why he has failed to comply with said order, and why he shall not be required to deliver to affiant all such live stock as shall be owned or consigned to him and brought to Covington by said railroad company, and to receive from him all such stock as he may offer for shipment over said road at affiant's said platform or at the
32 said depot in the Covington stock-yards free of lotage or other charges than the transportation charges, and that with his response to said rule he be required to file the said contract, of date the 19th November, 1881, between said Kentucky Central railroad and said stock-yard companies; and he prays for all such appropriate orders as will compel the said receiver to do his whole duty in the premises.

C. W. KEITH.

Subscribed and sworn to by C. W. Keith before me this 25th day of June, 1886.

[SEAL.] CHAS. A. TINLEY,
*Notary Public, Kenton Co., Ky.*

And on July 7th, A. D., 1886, the following order [was] entered herein, viz:

GEORGE T. BLISS and ISAAC E. GATES, Trustees,
*vs.*
THE KENTUCKY CENTRAL RAILROAD COMPANY, &c.

The rule heretofore ordered to issue against H. E. Huntington, receiver, to show cause why he has not obeyed the order of this court entered June 22nd, 1866, not having been executed, it is now ordered that said rule be renewed, and that said H. E. Huntington, receiver, do show cause, if any he has, why he has not obeyed the order of this court entered June 22, 1886, on the 3rd day after the service of a copy of this order, the cause to be shown at
33 10 o'clock a. m., at the judge's chambers, in Louisville, Kentucky. If said 3rd day be Sunday, then the day following, at same place and hour.

It is also ordered that said Huntington, receiver, file with the clerk of this court, as soon as practicable after the service of this order, a copy of the contract between the Kentucky Central R. R. Co. and the Covington Stock-Yards Company.

And on a day following, to wit, on the 10th day of July, A. D. 1886, came the receiver and filed in the clerk's office a copy of the contract mentioned in the foregoing order; which said copy is in words and figures as follows, viz:

Copy.

This agreement, made and entered into this nineteenth day of Nov., A. D. 1881, by and between the Kentucky Central railroad, of

the first part, and the Covington Stock-Yards Company, of the second part, witnesseth:

That for and in consideration of the mutual covenants, stipulations, and promises hereinafter set forth, and the profits to be derived therefrom, the parties hereto agree and promise to do and perform the acts and covenants herein set forth. The said second party have erected and own, and promise to keep in good order, on the line of the road of the first party, between Washing-
34 ton and Russell streets and Fifteenth and Sixteenth street-, stock-yard- for the purpose of handling and caring for live stock; and they, the said second party, agree to keep said stock-yard property equipped with suitable fencing, feeding-pens, and other conveniences usual and customary in first-class yards in this country; and for the proper management of said stock-yards the second party further agrees to keep at hand a sufficient number of skilled workmen to perform the operations herein agreed to be done by the second party, and generally to do such labor as is generally provided by managers of stock-yards of the best class, viz., to load and unload and care for in the best manner all live stock delivered to them by first party at their own risk of damage while so doing, and in no event to charge more than sixty cents per car of full loads for loading and sixty cents per car for unloading, and no charges to be made for handling less than full loads, as per way-bills.

And the first party agree to pay the second party said sums as above set forth for loading and unloading and otherwise acting as their agent in the collection of freights and charges upon such business as shall be turned over to them by the first party.

And the second party agree to become liable for such
35 charges and to collect and pay over to first party as demanded from time to time such moneys as may come into their hands; and said second party further agree that their charges for feeding and caring for live stock shall not be more than is charged for similar services and supplies by other stock-yards of this country.

The party of the first part shall require all cars that may be loaded at yards for shipments south or east to be carefully bedded, which the party of the second part agree to do at rate usually charged in other yards.

And the party of the first part agree to make the yards of the second party their depot for delivery of all its live stock, and during the term of this contract not to build, nor allow to be built, on their right of way any other depot or yards for the reception of live stock.

It is further agreed between the parties that the delivery of stock in cars on switches or sidings provided for the purposes shall be considered a delivery of such stock to second party, and they from that time shall be responsible for same to first party.

The first party, to protect the business of the second party from damage in case the K. C. R. R. should extend its track over the river, do hereby agree that during the term of this contract the rate of freight from all points on their road and connections shall

36 not be less than five dollars per car more to the Union yards of Cincinnati than the rate to Covington yards from the same points.

The party of the first part hereby agrees that in making its business arrangements with any other railroad or transportation line the same shall be subject to the agreements herein mentioned, and that the yards of the party of the second part shall be the depot for all live stock received from its connections for Cincinnati or eastern markets.

This contract shall remain in force and binding for the term of fifteen years.

(Signed) KENTUCKY CENTRAL R. R. CO.
COVINGTON STOCK-YARDS CO.

Witness-:
M. E. INGALLS.
JOHN E. NORRIS.

And on the 12th day of July, A. D. 1886, came H. E. Huntington, receiver, and filed his response to rule issued upon affidavit of Charles W. Keith filed July 3, 1886; which said response is in words and figures as follows, viz:

*Receiver's Response to Rule Issued upon Affidavit of Charles W. Keith. Filed July* 3, 1886.

United States Circuit Court, District of Kentucky.

GEO. T. BLISS *et al.*, Complainants,
*versus*
THE KENTUCKY CENTRAL R. R. Co., Defendant.

37 For response to the rule issued against him upon the affidavit of Charles W. Keith in this cause filed July 3, 1886, H. E. Huntington, receiver, respectfully shows to the court—

First. That said Keith ought not now to prosecute said rule, because respondent says that before said date the said Keith filed in this cause his similar complaint and obtained thereon a rule similar in substance to the rule now issued, and the *the* same matters and things now again brought before the court were thereupon fully argued before his honor the circuit judge of this circuit, at chambers, at Cincinnati, Ohio, on the 22nd day of June, 1886, and it was thereupon by him considered that said matters and things ought to be litigated between said Keith and the Covington Stock-Yards Company, and ordered that they should interplead between each other as to said matters and things and as to all things touching the claim of the Covington Stock-Yards Company to any exclusive privilege or right under its contract of November 19, 1881, and expressly refused to determine as to said Keith's complaint against this respondent, or to adjudge whether this respondent's response to said former rule setting up, among other things, said exclusive right of the Covington Stock-Yards Company was or not sufficient, until the con-

clusion of such litigation between said company and Keith,
38 and because thereupon the said stock-yards company did, with reasonable promptness, to wit, on the 26th day of said month, file its interpleader against said Keith pursuant to said order, and same is still pending, undisposed of, and unanswered and without any pleading or proceeding on the part of said Keith as against said stock-yards company, or any slip on his part other than the renewed attempt under this rule to affect and impair the contract rights claimed by said stock-yards company and in the absence of said company.

Second. Respondent further says that all the matters and things set forth in said affidavit of July 3, 1886, as to the construction of chutes by said Keith and the designation of a place therefor by this respondent were set forth in said former complaint, and are, as aforesaid, now held under advisement, awaiting the event of the issue directed between said Keith and stock-yards company.

Third. Respondent further says that in his response to said former rule he set forth, and now reiterates, that the place designated by said Keith for the reception and delivery of his live stock is not, in view of the necessary operation of said railroad, a convenient place therefor, and says that, except the general freight depot, there is no such convenient place in Covington, other than the yards of the Covington Stock-Yards Company.

And he says that his honor the circuit judge in fact di-
39 rected said order to be so drawn as to give respondent his option of delivering at general freight depot or at said stock-yards free of charges, other than ordinary transportation charges; that it was considered by his honor that said general freight depot was such convenient place, but that said part of said order was enlarged to allow respondent a wider discretion in his operation of said railroad.

Fourth. Respondent further says that he is informed and believes that the Covington Stock-Yards Company has not discriminated or made undue charges against said Keith for the use of the facilities provided by it for loading and unloading live stock, but has only demanded of him reasonable compensation therefor, in accordance with a general schedule of charges for all persons alike, prepared in conformity with the terms of said contract. But he again submits, as in his former response now under advisement as aforesaid, that whether such discrimination or extortion is practised ought to be subject to litigation between said Keith and stock-yards company; that said stock-yards company is not in law an agent of this respondent or of said railroad company, but is itself a public servant, bound to perform for said Keith the same services on the same reasonable terms as for other persons; is a separate corporation, is solvent and resident, and is amenable to any process of law or equity at the suit of said Keith for violation of its duty to him without this
40 respondent being a party thereto.

Respondent says he has not in any respect violated said

order, and he files herewith a copy of the contract mentioned in the rule, and prays that he be discharged with his costs.

HALLAM & MYERS,
*Sol'rs for Respondent.*

THE STATE OF KENTUCKY, } *sct:*
*Kenton County,* }

H. E. Huntington, the respondent, says the statements of the foregoing response are true, except as to such as are made upon information and belief, and he believes those to be true.

H. E. HUNTINGTON.

Subscribed and sworn to before me by the said H. E. Huntington this 9th day of July, 1886.

JOS. C. FINNELL,
*U. S. Clerk.*

And on the same day, to wit, on the 12th day of July, A. D. 1886, a memo. of agreement between H. E. Huntington, receiver, and C. W. Keith and Keith and Wilson was filed herein; which said memo. is in words and figures as follows, viz:

Whereas it has been agreed by and between H. E. Huntington, as receiver of the K. C. R. R. Co., and C. W. Keith and Keith and Wilson that from and after the 1st day of June, 1886, and until abrogated by written notice, all cattle, stock, and other property consigned to said Keith or Keith and Wilson which shall be
41 transported by said K. C. R. R. Co. to Covington, Ky., may be delivered to said Keith or Keith and Wilson without the prepayment of freight charges at or before such delivery, said R. R. Co. thus releasing its lien on the property so transported:

Now, we, C. W. Keith and Keith and Wilson, principals, and —— ——, surety, undertake and are bound, jointly and severally, and by these presents agree and promise, to pay to said H. E. Huntington, receiver of the Kentucky Central R. R. Company, or agent, all the freight charges that may be incurred by or may be or become payable or due by said Keith or Keith and Wilson to said H. E. Huntington, receiver, as aforesaid, on account of any consignments and shipments of freight, as aforesaid; the said freight charges for every consignment or shipment of freight to be paid at K. C. R. R. local freight office at Covington depot no later than 24 hours after the delivery of every such shipment or consignment of freight, respectively.

Witness our hands this — day of June, 1886.

—— ——.
—— ——.

And on July 12th, A. D. 1886, the affidavit of C. L. Talbott was filed herein. Said affidavit is in words and figures as follows, viz:

*Affidavit of C. L. Talbott.*

United States Circuit Court, District of Kentucky.

GEO. T. BLISS and ISAAC E. GATES, Complainants,
*vs.*
THE KENTUCKY CENTRAL R. R. Co., Defendant.

42 The affiant, C. L. Talbott, says he is a resident of Bourbon county, Ky.; a dealer in live stock, buying [and] shipping to the Covington market for sale, and has been so engaged for many years. He usually ships by the Kentucky Central railroad to the city of Covington; has never known of any live-stock depot being used or established by the said railroad except at the lots or yards of the Covington Stock-Yards Company, which is a very suitable and convenient place for receiving and unloading stock from the trains on said road—both for the railroad company and the shipper or consignee. He says that he is well acquainted with the location of the general freight and passenger depot of said railroad in the city of Covington; it is in a thickly populated part of the city, surrounded by open streets and thoroughfares, and is wholly unfit for a live-stock depot. There are no pens nor suitable platforms or chutes. If live stock is unloaded from the trains at that place they must be turned out into the general freight depot or on the streets. The main track, on which the passenger trains stand, are on one side of the depot, and the switch for receiving and unloading freight on the other, and should stock be unloaded at that depot it would have to be between the main track and the switch, and as there are trains, cars, and engines constantly moving in and
43 out there is great danger to and inconvenience in control-ing stock turned loose at that point. Furthermore, he says that, owing to the delay and difficulty in getting into that depot with a train and the frequent switching from one track to another, from the frequent sudden stops and starts, live stock are very much worried and injured and depreciated in saleable value. He says he would not allow his stock to be unloaded at that depot could he avoid it. He has been in the habit of employing C. W. Keith as his broker in making sales of live stock at that market, and knows that he has for many years done a large business in that line for interior Kentucky shippers, and is a careful and reliable man in that business, but affiant says he would not be willing to allow his stock to be taken out of the cars at the general freight and passenger depot, though he would greatly prefer to have it handled and sold by Mr. Keith. He says he has examined the platform and chute erected by Keith near the Covington stock-yards, and that it is a suitable and convenient place for loading and unloading live stock on and from the cars on the Kentucky Central railroad, quite as good if not better than the Covington stock-yards, and is within convenient distance of Keith's own stock-yards, where he is provided with the necessary means of taking care of live stock consigned to him for sale.

CHAS. L. TALBOTT.

44 STATE OF KENTUCKY, } *sct:*
*Harrison County,* }

Sworn to before me by C. L. Talbott this 10 day of July, 1886.

[SEAL.] PAUL KING,
*N. P., H. Co., Ky.*

Also the affidavit of G. R. Martin was filed on July 12th, A. D. 1886; which said affidavit is in words and figures as follows, viz.:

*Affidavit of G. R. Martin.*

United States Circuit Court, District of Kentucky.

GEO. T. BLISS and ISAAC E. GATES, Complainants,
*vs.*
THE KENTUCKY CENTRAL RAILROAD COMPANY, Defendant.

The affiant, G. R. Martin, says he is a resident of Nicholas county, Kentucky; a dealer in live stock, buying and shipping the same to Covington, Ky., by way of Kentucky railroad for sale; that he has heretofore been in the habit of consigning his stock to C. W. Keith as his commission broker for sale at his yards in Covington. He says that on the 23rd inst. he had a lot (119 in number) of live hogs at the station at Carlisle, on the Maysville branch of said road, and desired to ship the same, consigned to said Keith at his said yards, but the agent at that station refused to receive and so ship them, saying that he had instructions from the general freight
45 agent at Covington not to ship any live stock to said Keith's yards, but would bill them to the Covington stock-yards, which was done, and affiant, desiring to place said stock in the custody of said Keith at his yards, was obliged to pay lotage to said Covington stock-yards before he could get the control of the stock.

Affiant is acquainted with the location of the city depot of the said railroad in Covington, and knows that there are no suitable arrangements there for loading or unloading live stock, and he has never known any such arrangements at that depot, but said railroad company has for twenty-five years maintained the depot for live stock at the place where the said Covington stock-yards company now has its yards, and he has not known any other. He has known C. W. Keith to be engaged in the live-stock business for over twenty years at Covington, and that he has had a good and prosperous business with live-stock dealers and shippers in central Kentucky who have sent their stock to the Covington market, and he knows that his said business has been greatly interrupted and embarrassed by the refusal of the railroad managers to allow stock to be consigned to him at his said yards at Covington.

June 24, 1886.

GEO. R. MARTIN.

Subscribed and sworn to by Geo. R. Martin before me this 24th day of June, 1886.

[SEAL.] CHAS. A. TINLEY,
*Notary Public, Kenton Co., Ky.*

46 And on the 12th day of July, A. D. 1886, the affidavit of E. W. Wilson was filed herein; which said affidavit was in words and figures as follows, viz:

*Affidavit of E. W. Wilson.*

United States Circuit Court, District of Kentucky.

GEO. T. BLISS and ISAAC E. GATES, Complainants,
*against*
THE KENTUCKY CENTRAL RAILROAD COMPANY, Defendant.

Affiant says he is a resident of the city of Covington, and has been engaged in buying and selling live stock and a live-stock commission broker for fifteen to twenty years in said city, transacting business at the Covington stock-yards and at C. W. Keith's yards, and also at stock-yards in Cincinnati, Ohio. He says that live stock greatly deterio-ates in value by being confined in railroad cars after transportation without feed or water. He says that an hours or two's delay in the discharge of live stock from the cars is very damaging thereto. He says the market in Covington for live stock is held at the Covington stock-yards and Keith's yards, both being very near together—not more than one hundred feet apart; that live stock usually arrives in the night time or early morning hours by the Kentucky Central railroad, and buyers start to the stock-yards for purchasing usually before seven o'clock, and unless the stock has been unloaded upon the arrival of the trains and allowed
47 the intervening time for refreshments [it] generally is presented in the market at great disadvantage and the saleable value is diminished.

Of necessity for the protection of live stock there should be covered pens to place them in for feeding and watering as soon as it is practicable upon removing them from the cars. He says that if stock immediately upon being unloaded from the cars have to be removed any considerable distance for shelter and other accommodations, as above stated, it is a great injury to them, especially to fat stock, and most especially to fat hogs, which often die from exhaustion when so removed before rest and refreshment.

Affiant is well acquainted with the Covington stock-yards. They are situated between Fifteenth and Sixteenth streets, on the west side of Washington street, in the city of Covington, more than half a mile south of the city freight and passenger depot, and are connected with the only live-stock switch that has been used by said railroad company, within affiant's knowledge, by suitable platforms and chutes for loading and unloading live stock from and into said yards.

Affiant has never known the said railroad company to have or use any other live-stock depot than the place now embraced within the enclosure of the said Covington Stock-Yards Company, and the same is in every respect suitable and convenient to the railroad company and stock owners or consignees.

48 He is well acquainted with the city freight and passenger depot of said railroad company, and says it is not a suitable

place for receiving or discharging live stock to and from said railroad, there being neither platforms suitable nor chutes for putting on or taking off live stock from the cars.

There are no lots or pens of any description and so inaccessable that it requires much time and necessary switching of cars and trains to reach it from the main track of said railroad, all of which is extremely detrimental to such stock. Said depot is in a part of the city thickly built up with houses and thronged streets on all sides of it by or through which access can be had to it, which renders it most inconvenient and difficult to get live stock to and from it.

Affiant knows the location of the platform and chute recently constructed by said Keith; it is situated not exceeding fifty feet north of the north line of the said Covington stock-yards and binding on the same live-stock switch from which the said Covington stock-yards receive all stock shipped to it and discharged from the cars on said road.

The said platform and chute is in every respect as suitable and as convenient to said railroad company for receiving, loading, and unloading live stock as those of the said Covington Stock-Yards Company—indeed, more so, as the chute is wider and is more
49 easy to set the cars to it than those of the Covington yards, and require consequently less shifting of the cars. Affiant was present when the receiver, H. E. Huntington, told said Keith, after several consignments of stock had been delivered to Keith at the city depot and it had been demonstrated that it was not a suitable or convenient place to either Keith or the road, that if he would provide a place for receiving and discharging live stock from any point on the company's live-stock switch that he would set the cars in for him and there receive and discharge all stock consigned to him, and he knows that said Keith purchased the ground and constructed the platform and chute with that purpose and object.

He says that he knows that it had been the habit of said Covington Stock-Yards Company before about the 8th day of May last past to pass all stock coming in on the Kentucky Central railroad not detained by the consignee or owner in the yards of said company for feeding or sale free of any charge for lotage, irrespective of its destination, and that since that time the agents and managers of said stock-yards have required persons passing stock through said yards to disclose the destination of such stock, and in all cases where the stock was to be taken to Keith's yards lotage has been demanded and required to be paid before the stock would be allowed to leave the yards; in all other cases no lotage would be charged.

50 There is one exception, which occurred on the 23- inst., when, after having demanded lotage and locked up a lot of stock, it was released and taken to Keith's yards. It sometimes occurs, when stock — consigned to Keith or his yards and is not sold there, it is taken over to the Union stock-yards, in Cincinnati, and sold there, in which case lotage has to be paid them, and if lotage has been exacted at the Covington yards the stock is thus subjected to double charges. The lotage charge is for the use of the pens to

retain the stock and for the use of the scales in case of sale, and unless a sale is made there is no lotage charge. This has been the habit of the said Covington Stock-Yards Company, and in no other case has affiant known such charge to be made, except when stock was to be taken to Keith's yards.

There is an ordinance of the city of Covington forbidding the driving of stock through the streets of the city on the Sabbath day after the hours of ten o'clock a. m. under heavy penalties, and it not infrequently occurs that a delayed train does not reach the city until after that hour, and they come frequently on Sunday, and in case of delivery of stock to Keith at the city depot he would be subject to the penalty under said ordinance, unless he should be able to get a permit from the city authorities to drive such
51 stock from the city depot to his said yards. Such an instance did occur with some of the stock recently delivered to said Keith at the city depot.

June 25, 1886.

E. W. WILSON.

Subscribed and sworn to by E. W. Wilson before me this 25th day of June, 1886.

[SEAL.]

CHAS. A. TINLEY,
*Notary Public, Kenton Co., Ky.*

And on the 12th day of July, A. D. 1886, the affidavit of Samuel Bryan was filed herein; which said affidavit is in words and figures as follows, viz:

*Affidavit of Sam. Bryan.*

United States Circuit Court, District of Kentucky.

GEO. T. BLISS and ISAAC E. GATES, Complainants,
*vs.*
THE KENTUCKY CENTRAL RAILROAD CO., Defendant.

The affiant, Sam'l Bryan, says he is a resident of Campbell county, Kentucky, and a dealer in live stock, buying in the country and shipping to Covington for sale upon the Kentucky Central railroad; he has been so engaged for several years, and has continuously employed C. W. Keith as his commission broker to make sales for him, and has also employed others. He says that his stock so brought to Covington by said railroad company has been discharged at its live-stock depot in the yards of the Covington Stock-
52 Yards Company, the only depot for that purpose he has ever known the said railroad company to have or use, which he says is a suitable and convenient place for that purpose to the railroad company and to shippers and buyers. He says that he is acquainted with the location of the city depot of said railroad in Covington, at the end of its line. He says there are no arrangements suitable for the receipt or delivery of live stock provided at the said city depot and never have been, to the knowledge of affiant. There are no lots at that point and no place for stock to be dis-

charged from the cars, except in the general or on the open public street, and the said depot is wholly unsuitable for a live-stock depot. The platform and chute erected by said Keith on his lot near the stock lots of the Covington Stock-Yards Company are well suited for receiving and discharging live stock on or off the cars on said railroad, the platform being adjacent to the same switch from which the said Covington Stock-Yards Company received and load live stock on and from the cars on said road.

SAMUEL BRYAN.

Subscribed and sworn to by Samuel Bryan before me on this 24th day of June, 1886.

[SEAL.]

CHAS. A. TINLEY,
*Notary Public, Kenton Co., Ky.*

And on the 12th day of July, A. D. 1886, the affidavit of Richard Rees was filed herein; which said affidavit is in words and figures as follows, to wit:

53 *Affidavit of Richard Rees.*

United States Circuit Court, District of Kentucky.

GEO. T. BLISS and ISAAC E. GATES, Complainants,
*ag'st.*
THE KENTUCKY CENTRAL R. R. Co., Defendant.

The affiant, Richard Rees, says he is a resident of Harrison county, Kentucky; a dealer in live stock at the Covington market, and has been so engaged for many years, shipping live stock to that market by the Kentucky Central railroad. He says that he is well acquainted with the location of the general freight and passenger or city depot of said company in the city of Covington, and knows it is not a suitable or convenient place to load or unload live stock, either to the shipper or the railroad company. It is not a safe place, and there are no stock-pens or chutes, which are essential in loading and unloading stock from and to the cars. He says he would not allow his stock to be unloaded at that place if he could avoid it. He has seen the platform and chute erected by C. W. Keith near the Covington stock-yards, and believes it a suitable and convenient place to the railroad company to load and unload stock, quite as good as the Covington stock-yards.

He says that he has never known any other live-stock depot to be used at Covington by the Kentucky Central railroad than that in the Covington stock-yards.

He has known stock to be unloaded there ever since the
54 yards were established, and has never known lotage to be charged on stock merely passing through the lots from the railroad cars to the public highway. Such stock has been allowed to pass through without charge to the owner or consignee until recently. He has heard that lotage is charged on all stock passing through and going to C. W. Keith's yards. All others go free, unless sold and weighed in the yards; has been notified by the

stock-yards company that he would have to pay lotage on all stock passing through there yards to Keith's yards.

R. J. REES.

STATE OF KENTUCKY, } *sct:*
*Kenton County,* }

Sworn to before me by R. J. Rees this 1st day of July, 1886.

[SEAL.] R. K. TARVIN,
*Notary Public.*

And on the 12th day of July, A. D. 1886, the affidavit of Lycurgus Smith was filed herein; which said affidavit was in words and figures as follows, viz:

*Affidavit of Lycurgus Smith.*

United States Circuit Court, District of Kentucky.

GEO. T. BLISS and ISAAC E. GATES, Complainants,
*ag'st*
THE KENTUCKY CENTRAL R. R. Co, Defendant.

The affiant, Lycurgus Smith, says he is a resident of the county of Henry, in the State of Kentucky, a dealer in live stock,
55 and often takes such live stock to the Covington market by way of the Louisville and Nashville and the Kentucky Central railroads, transferring to the latter at South Covington.

He says that on the 19th inst. he shipped from ——, on the L. & N. R. road, a lot of hogs to Covington, consigned to Chas. W. Keith's yards, which was delivered to said Keith without any charge for lotage, to the knowledge of affiant, for passing through the Covington stock-yards, as they did from the railroad cars.

On the 24th inst. he shipped from the same place a car-load of lambs, consigned to Keith's yards in Covington, which was discharged from the cars into the Covington stock-yards, and he was required to pay and did pay $5.69 lotage thereon, against which he protested. He says it was his intention and desire to place his said stock in the hands of said Keith for keeping and sale.

He says he is acquainted with the location of the city depot of said Ky. Cent. R. R. Co. in Covington, and knows that it is not a convenient nor suitable place for the receipt and delivery of live stock to or from said railroad, and he has seen some preparation for loading or unloading stock at that place.

He has examined the platform and chute erected by said Keith near the Covington stock-yards, and says it is a convenient and suitable place for receiving and discharging live stock to and from said Ky. Cent. R. R. He knows of no other place along said
56 road in Covington that has been prepared and is suitable for that purpose than the Covington stock-yards or said Keith's platform.

The depot for live stock used by the Ky. Cent. R. R. Co. has been, to his knowledge, at the same place where the Covington stock-yards are now situated for the past twenty years.

LYCURGUS SMITH.

Subscribed and sworn to by Lycurgus Smith before me this 25th day of June, 1886.

[SEAL.] CHAS. A. TINLEY,
*Notary Public, Kenton Co., Ky.*

And on the 12th day of July, A D. 1866, the affidavit of F. Winstead was filed herein; which said affidavit was in words and figures as follows, viz:

*Affidavit of F. Winstead.*

United States Circuit Court, District of Kentucky.

GEO. T. BLISS and ISAAC E. GATES, Complainants,
*ag'st*
THE KENTUCKY CENTRAL R. R. Co., Defendant.

The affidavit of F. Winstead, who says he is a citizen of Covington, Ky.; is a dealer in live stock, and commission broker; that he receives stock from the interior of Kentucky, shipped over the Kentucky Central railroad, at the Covington stock-yards, and has so received stock for many years past; that he has not been required to pay lotage except in cases where he has sold stock and had
57 it weighed on the scales of the company. In all other cases he has been allowed to pass stock through the yards to the public highway free of charge, and that has been the practice of the stock-yards company for many years past, until recently lotage has been required on stock going to C.W. Keith's yards, near by the Covington yards, but in other cases no charge is made.

He says the yards of the Covington stock-yards is the only depot for live stock shipped to and from Covington on the Kentucky Central railroad he has known that railroad company to have or use. Until recently, stock consigned to C. W. Keith has been discharged at the general freight and passenger depot.

He says the stock-yards is a convenient and suitable place for receiving live stock transported or to be transported over that road to and from Covington, but the general freight and passenger depot is wholly unfit for that purpose of receiving and shipping live stock.

There are no pens, yards, or chutes. The depot is surrounded by public streets and thoroughfares, rendering it exceedingly difficult and inconvenient to handle and control stock, either putting on or taking off the cars.

The depot is difficult to get at with the trains, requiring much switching of the cars, stopping, and starting, thereby subject-
58 ing the stock to great wrong, and rendering them less valuable for sale. Stock trains are often brought in at night, when it is not difficult to unload the cars, upon arrival at the stock-yards, when the trains are brought in on a single live-[stock] switch to the platform of said yards and the stock taken out into the yards and passed through to the public highway or street.

If stock be brought to the city depot by the freight trains it could not be taken out until daylight, and retaining the stock in the cars for two or three hours or more after the journey was completed

would be a great detriment and injury to it. I would not allow my stock to be discharged at the city depot.

I have seen Keith's platform and chute erected adjacent to the Covington stock-yards. It is very conveniently situated and arranged for receiving or shipping from and upon the Kentucky railroad by the same live-stock switch used in receiving and shipping stock at and from the Covington stock-yards; quite as much so as that of the latter's yards. Keith's own yards are near by his platform and chute, where he has all needed conveniencies for receiving and taking care of and weighing stock.

Live stock after having been transported even a very short distance by rail should be immediately taken out of cars and placed in convenient and suitable pens and refreshed and rested before
59 being offered for sale, unless the oppertunity of selling them is offerred upon arrival, when sales may be advantageously made; but in case the stock must be kept over for sale it is very important to take them out of the cars and yard them for rest and refreshment.

FRANK WINSTEAD.

STATE OF KENTUCKY, } *sct:*
*Kenton County,* }

Sworn to before me by F. Winstead this 1st day of July, 1886.

[SEAL.] WM. JAS. DAVIDSON,
*Notary Public.*

And on the 12th day of July, A. D. 1886, the affidavit of J. P. Drennan was filed herein. Said affidavit was in words and figures as follows, viz:

*Affidavit of J. P. Drennan.*

United States Circuit Court, District of Kentucky.

GEO. T. BLISS and ISAAC E. GATES, Complainants,
*against*
THE KENTUCKY CENTRAL R. R. Co., Defendant.

The affidavit of J. P. Drennan, who says he is a resident of Fleming county, Kentucky, and has been for many years a dealer in live stock, buying and shipping by the Kentucky Central railroad to Covington market for sale.

He is well acquainted with Chas. W. Keith, a live-stock dealer and commission broker at Covington, and has often employed
60 him to sell live stock at that and the Cincinnati market, and knows that he has been employed by many others—neighbors and acquaintances of affiant—in the counties along the Kentucky Central railroad.

He says he has never known the said railroad company to have any other live-stock depot in the city of Covington than at the Covington stock-yards, which is a suitable and convenient place for loading and unloading live stock to and from the cars on said railroad, both to the railroad company and the shipper or consignee.

He knows the platform and chute erected by C. W. Keith adjacent to the live-stock switch from which stock brought to Covington by said railroad is discharged into the Covington stock-yards and believes it a suitable and convenient place to receive and discharge live stock by said railroad company (equally to that of the said Covington Stock-Yards Company), as well to the shipper as the railroad company. He says it is but a short distance from said platform and chute to Keith's stock-yards, where he is provided with all necessary conveniences for taking care of, feeding, and weighing live stock.

He says he knows the main freight and passenger depot of said railroad company in the city of Covington. It is situated in a thickly-populated part of the city, surrounded by open streets and thoroughfares, and is wholly unsuitable for a live-stock depot.

61 There are no pens or yards, no chutes to pass and receive the stock from the cars, and in discharging stock from the cars it would have to be turned into the street or into the general freight depot and then into the street, which would be extremely inconvenient, both to the company and the owner of the stock.

That depot is also very inaccessable and requires much switching and pulling [of] the trains backward and forth to get up to the depot, which is very injurious to the stock and greatly diminishes their saleable value.

He would not allow his own stock — and has heard a general expression of opinion of live-stock dealers and shippers to the Covington market that that is not a suitable place for discharging live stock from the cars, and say they would not allow their stock to be put off at that place. Persons I have heard so express themselves are customers of C. W. Keith, who usually employ him as a broker for the sale of their stock, but who will not employ him or consign their stock to him if it is to be discharged at the city depot. That depot is at least half a mile from the stock-yards of Keith, and he knows of no suitable place for keeping and feeding stock near to said depot. I recently consigned my stock to Mr. Keith at his yards, which has been unloaded at the Covington stock-yards, and the stock-yards company required me to pay lotage if I took any stock to Keith's yards, but otherwise lotage was not required.

62 I know that it has been the habit, up to a recent date, of said Stock-Yards Company to charge lotage only on stock weighed and sold at said yards, allowing all other stock to pass free. They now charge lotage on stock not weighed in their yards only when going to Keith's yards.

J. P. DRENAN.

Subscribed and sworn to before me by J. P. Drenan this 1st day of July, 1886.

[SEAL.] R. K. TARVIN,
*Notary Public.*

And on the 15th day of July, A. D. 1886, the second affidavit of E. W. Wilson was filed herein. Said affidavit is [in] words and figures as follows, viz:

*Affidavit of Ed. W. Wilson.*

United States Circuit Court, District of Kentucky.

GEO. T. BLISS, &c., Complainants,
*against*
THE KENTUCKY CENTRAL R. R. Co., Defendant.

E. W. Wilson says he is associated with C. W. Keith in the live-stock business in Covington, and acting as book-keeper as well as attending to the receipt of live stock consigned to said Keith or his stock-yards, and has been so engaged since before the 1st day of March last past.

He annexes hereto a detailed statement of the receipts of live stock by said Keith brought to Covington on the Kentucky
63 Central railroad, marked "A," showing the date of receipt, the number and character of the stock, and also the places of delivery by the railroad company or receiver, and the amount of lotage paid on each lot when delivered at the Covington stock-yards; also of stock offered for shipment east.

He says that since the 22d June last there has been in use at the city freight depot, in the delivery of stock, a platform or apron to cover the space between the car and the depot, to pass the stock over, of equal width with the car door, about five feet; and also side railings about four feet high and six feet in length, to answer the purpose of a chute. There are wholly insufficient to safely deliver stock other than sheep; hogs and cattle are apt to rush out when started from the car, and to break down such railing. The railing would not in the least assist in loading stock into the cars, being only the same width apart as the sides of the car door; would not facilitate but would be a hindrance in getting stock into the car.

At the freight depot the stock is discharged from the cars between the main railroad track on Washington street and the side tracks or spurs, from and upon which freight is received and discharged, which renders it not only difficult but dangerous on account of the frequent moving of trains on those tracks.

He makes the diagram marked "B" part hereof, which
64 shows with reasonable accuracy the location of the freight depot and its surroundings. The three-feet-high platform shown on the diagram is the place where the stock delivered at that depot is unloaded. The open space designated is much more access-able than the platform, and would be more convenient to both the railroad and to Keith. Chutes of sufficient strength and perma-n-cy, as well as pens to contain stock, might be erected on that open space.

On account of the refusal of the receiver to deliver stock to Keith at the stock-yards or his own platform and chute, and compel-ing him to receive at the freight depot, his business has been greatly

diminished, many of his patrons being unwilling to allow their stock to be taken to the freight depot.

E. W. WILSON.

Subscribed and sworn to by E. W. Wilson before me this 14th July, 1886.

[SEAL.] CHAS. A. TINLEY,
*Notary Public, Kenton Co., Ky.*

Exhibit "A," filed with the foregoing affidavit, is in words and figures as follows, viz:

EXHIBIT "A."

*Statement of Stock Passed through the Covington Stock-Yards on which Lottage was Charged.*

| 1886. | | Lottage paid. |
|---|---|---|
| May 9. | R. Rees, 35 sheep, 6 cattle, 12 calves | 4 45 |
| 9. | R. Rees, 76 hogs | 4 56 |
| 10. | H. H. Hall, 1 calf | 10 |
| 65 12. | W. H. Craig, 102 sheep | 5 10 |
| 12. | " " 32 hogs, 10⅔ cattle | 4 42 |
| 13. | R. Rees, 59 hogs | 3 54 |
| 14. | Drenan & Wilson, 67 hogs | 4 02 |
| 15. | B. F. Arnold, 2 calves, 45 hogs, & 15 sheep | 3 65 |
| 19. | A. Seveir, 71 hogs | 4 26 |
| 20. | Drenan & Wilson, 41 " 28 sheep | 3 86 |
| 20. | " " 65 " | 3 90 |
| 23. | R. Rees, 39 " | 2 34 |
| 30. | Kennedy & Hume, 21 cattle | 5 25 |
| June 6. | Drenan & Wilson, 20 " | 5 00 |
| 9. | Talbot & Breeding, 59 hogs | 3 54 |
| 9. | " " 67 " | 4 02 |
| 9. | Drenan & Wilson, 70 " | 4 20 |
| 16. | " " 21 cattle | 5 25 |
| 16. | A. J. Arnold, 51 hogs | 3 06 |
| 16. | J. S. Chilton, 62 " | 3 72 |
| 16. | Talbot & Breeding, 65 " | 3 90 |
| 16. | Kennedy & Hume, 27 hogs & 9 cattle | 3 87 |
| 17. | Drenan & Wilson, 17 " & 98 sheep | 5 92 |
| 17. | " " 72 " | 4 32 |
| 17. | Martin & Scobee, 73 " | 4 38 |
| 20. | L. Lebus, 55 " | 3 30 |
| 20. | Martin & Scobee, 38 " | 2 28 |
| 24. | " " 119 " | 7 14 |
| 23. | Sam. Bryant, 17 " | |
| 25. | R. M. & L. Smith, 113 lambs | 5 65 |
| 26. | Kennedy & Hume, 206 " | 10 30 |
| 30. | Frank Arnold, 106 " | 5 30 |
| 30. | Kennedy & Hume, 14 cattle | 3 50 |
| 30. | R. M. & L. Smith, 113 lambs | 5 65 |

| 1886. | | Lottage paid. |
|---|---|---|
| July | 2. R. M. & L. Smith, 61 hogs | 3 66 |
| 66 | 4. Kennedy & Hume, 220 lambs | 11 00 |
| | 6. R. Rees, 114 hogs, 1⅔ cattle | 7 19 |
| July | 6. Talbot & Breeding, 54 hogs | 3 24 |
| | 6. Kennedy & Hume, 217 lambs | 10 85 |
| | 7. J. S. Chilton, 20 hogs & 155 sheep | 8 95 |
| | 11. Kennedy & Hume, 30 hogs & 7 cattle | 3 55 |
| | 11. J. S. Chilton, 18 cattle | 4 50 |
| | 14. Kennedy & Hume, 237 lambs | 11 85 |
| | " Jno. Kirk, 57 hogs | 3 42 |
| | " A. Cox, 13 cattle | 3 25 |

*Statement of Stock Unloaded at Freight Depot Since June* 22, 1886.

| | | |
|---|---|---|
| June | 26. Talbot & Breeding, 65 hogs | |
| | 27. J. D. Gruelle, 8 cattle & 47 lambs | |
| | 30. Jno. Otzel, 11 hogs | |
| | 26. —— Clark, 1 cow & calf | |
| July | 7. S. J. Ecklar, 121 lambs | |
| | 14. Drennan & Wilson, 56 hogs | |
| 1886. | | |
| May | 17. 120 hogs, ship't to Wm. Holmes, lottage ch'g'd | 7 20 |
| | 2. Offered K. C. R. R. 255 lambs for sh'p't east | |
| | 8. " " 92 " " | 4 60 |
| | | 11 80 |

Exhibit "B," filed with the foregoing affidavit, is in words and figures as follows, viz:

(Here follows diagram marked p. 67.)

68 And on the 15th day of July, A. D. 1886, the third affidavit of E. W. Wilson was filed herein; which said affidavit is in words and figures as follows, viz:

*Affidavit of E. W. Wilson.*

United States Circuit Court, District of Kentucky.

Geo. T. Bliss and Isaac E. Gates, Complainant,
*ag'st*
Ky. Central Railroad Company, Defendant.

E. W. Wilson says he was present at the office of Chas. L. Brown' the general freight agent of the Ky. Central, railroad, when C. W. Keith had a conversation with said Brown about the delivery of stock consigned to Keith and brought to Covington by said railroad. This was a few days after the date of the notice from Keith to Brown, as stated by Brown in his affidavit herein. Keith reiterated his objection to the delivery of his stock into the Covington stock-yards,

so that he would have to pay charges. Brown said "they had no other place, except the city depot," and asked Keith "if he would take it there." Mr. Keith said he would for the time being, until another place could be provided. Brown said he would deliver at the city depot, but in an instant said, "No, I will deliver at the stock-yards, as I have always done."

Keith insisted that a better place could be provided. Brown replied that "they were not building platforms and chutes now, but were running a railroad."

69 Mr. Huntington was present at the time, and said that if Keith would provide a place he would deliver the stock at that place.

He says that when Mr. Hall called on him in regard to executing an agreement to pay freight he did refuse, and told him they would not receive stock at the city depot; that it was not a proper place, and that Mr. Huntington himself had so sworn in the United States court.

He says it is not necessary for trains to stand on the track in the way of other passing trains to unload stock at Keith's chute, as stated by Brown in his affidavit. Cars containing stock consigned to Keith are brought in the same trains that bring stock to the Covington stock-yards, and by placing the cars with Keith's stock in the front part of the train it could be unloaded at the same time with those having stock for the Covington yards, and would obstruct the movement of other trains no more than cars unloading at the stock-yards, all being on the same switch.

He says that in two or three instances since the 22 of June last stock has been offered by Keith to the Ky. Central railroad for shipment and it was refused, and there was no suitable place provided by the road for receiving the same into the cars.

E. W. WILSON.

Subscribed and sworn to before me by said E. W. Wilson this 14th day of July, 1886.

70 WM. GOEBEL,
*Examiner, Kenton County, Kentucky.*

And on the 15th day of July, A. D. 1886, the following notice was filed herein, viz:

COVINGTON STOCK-YARD CO.,
COVINGTON, KY., *May 8th*, 1886.

C. W. Keith, Esq.

DEAR SIR: On and after this date yardage will be charged on all stock unloaded at the Covington stock-yards & taken to your yards.

W. A. PETER, *Sup't.*

And on the 15th day of July, A. D. 1886, a plat of the live-stock switch and Covington Stock-Yards Company's property was filed herein; which said plat is in words and figures as follows, viz:

(Here follows diagram marked page 71.)

72 And on the 15th day of July, A. D. 1886, the following notice was filed herein, viz:

*Subject: Delivery of Live Stock.*

OFFICE OF THE L. F. A.,
KENTUCKY CENTRAL RAILROAD CO.,
COVINGTON, KY., *June* 26, 1886.

C. W. Keith, Esq., Covington, Ky.

DEAR SIR: I am instructed to notify you that in future all live stock coming from Ky. Central R. R. stations consigned to your firm or care will be delivered at the freight depot, between Eighth and Seventh St-., on Washington St.

I would be glad if you will call and sign the bond which we had agreed upon prior to the injunction.

Yours truly, W. P. WALKER, JR.,
*Agent H.*

Endorsed: Notice received at 9½ o'clock p. m., on June 26th, 1886.

And on the 15th day of July, A. D. 1886, the affidavit of E. Randolph was filed herein. Said affidavit is in words and figures as follows, viz:

*Affidavit of E. Randolph.*

73 THE STATE OF KENTUCKY, } *sct:*
*Kenton County,* }

United States Circuit Court, District of Kentucky.

GEO. T. BLISS *et al.*, Complainants,

*vs.*

THE KENTUCKY CENTRAL RAILROAD CO., Defendant.

E. Randolph says he is a civil engineer and superintendent of the road department of the Kentucky Central railroad; that on or about the 22 day of May, 1886, under instructions from the receiver of said railroad and upon representation that C. W. Keith desired his live stock unloaded at the general freight depot in Covington, this affiant caused to be constructed a chute for such unloading, consisting of an apron or platform of the width of an ordinary stock chute and made to fit in a car door, with railings to fit firmly on each side thereof; that the platform of said general freight depot designated for unloading said live stock is on a level with the floor of the cars, of the usual height, and is in the open air south of the end of the depot building; that directly in front of said chute when located at said place is a roadway, beginning on a level with said platform and graded thence down to the general level of the streets at a grade of about six degrees; that it would be impossible for live stock to find any place to jump or fall off said platform without turning sharply in one direction, to wit, to the right, and remaining

on said platform for a distance of about fifty feet in that direction; that said chute is still at said point ready for use.

A copy of the correspondence on the subject of gangways
74 for delivery to said Keith is filed herewith.

EPES RANDOLPH.

Subscribed and sworn to before me by said Epes Randolph this 14 day of July, 1886.

WM. GOEBEL,
*Examiner, Kenton County, Kentucky.*

The correspondence mentioned in and filed with the foregoing affidavit is in words and figures as follows, viz.:

*Shipments of Stock Consigned to C. W. Keith.*

OFFICE OF THE RECEIVER,
COVINGTON, KY., *May* 20, '86.

E. Randolph, Esq., sup't roadway building:

DEAR SIR: It has become necessary; as a matter of protection, that all consignments of stock to C. W. Keith shall be unloaded in the Covington depot in lieu of the Covington stock-yards, as heretofore. It will therefore be necessary that suitable gangways be made, so that stock can be unloaded from the cars onto the platform. Two gangways will be sufficient, so that we will thus be enabled to unload two cars at one time. The stock will be unloaded at the south end of receiving depot and on the west side of same. Please give instructions to have these made at once, as the order for the change in delivery goes into effect immediately.

Yours truly, H. E. HUNTINGTON, *Receiver.*

75 H. E. H., Esq., receiver:

Above noted and order has been complied with.
May 22nd, 1866.

E. RANDOLPH.

And on the 15th day of July, A. D. 1886, the affidavit of Lewis Hood was filed herein; which said affidavit is in words and figures as follows, viz.:

*Affidavit of Lewis Hood.*

United States Circuit Court, District of Kentucky.

GEO. T. BLISS *et al.*, Complainants,
*vs.*
THE KENTUCKY CENTRAL RAILROAD CO., Defendant.

Lewis Hood says he is secretary of the Kentucky Central Railroad Company, with his office located at Covington; that since June 22, 1886, there has been no live stock, consigned to Charles W. Keith or any concern wherein he is interested, delivered, so far as affiant knows or is informed and believes, at the Covington stock-yards;

that affiant believes a copy of the accompanying paper, signed by H. E. Huntington, receiver, was delivered to said Keith on or about its date, advising him that all consignments of stock to him *to* Covington would be delivered at Covington depot, meaning general freight depot; that about said date, and before and afterward, said Keith stated in the hearing of affiant that he wished his consignments of live stock delivered to him at said general depot;
76 that after said day always such stock consigned to said Keith or his firm from any point on the Kentucky Central railroad has been so delivered; that special arrangements therefor were made, including a chute and the keeping of employees on hand to deliver; that it is safe and practical to so deliver, and that at the usual hours of arrival of live stock there are no vehicles nor any crowd or locomotive to interfere with such unloading.

LEWIS HOOD.

Subscribed and sworn to before me by said Lewis Hood this 14th day of July, 1886.

WM. GOEBEL,
*Examiner, Kenton County, Kentucky.*

And on the 15th day of July, A. D. 1886, the affidavit of Sidnor Hall was filed herein; which said affidavit is in words and figures as follows, viz:

*Affidavit of Sidnor Hall.*

THE STATE OF KENTUCKY, } *sct:*
*Kenton County,* }

United States Circuit Court, District of Kentucky.

GEO. T. BLISS *et al.*, Complainants,
*vs.*
THE KENTUCKY CENTRAL RAILROAD CO., Defendant.

Sidnor Hall says he is chief clerk of the local freight office of the Kentucky Central railroad at Covington, Kentucky; that, so far as he knows or is informed or believes, no live stock consigned
77 to Charles W. Keith or his firm to Covington has, since June 22, 1886, been delivered otherwise than at the general freight depot; that the facilities there are ample, and special arrangements have been made for such delivery, as set forth in the affidavit of W. P. Walker, Jr.; that on the 24th or 25th day of June, 1886, affiant went to the place of business of said C. W. Keith and his partner, E. W. Wilson, to wit, at their stock-yards adjoining the Covington stock-yards, to procure the signature of an agreement that they would pay freight on such stock as should be consigned to them, whereby to facilitate delivery without immediate payment; that theretofore said Keith had said to affiant that he would give bond to make such payments, in order that live stock might be delivered to his agents at the general freight depot without immediate payment, but that when said agreement was presented to said Wilson

(his partner, said Keith being absent) he refused to sign same, and said that said depot was not a convenient place to receive live stock, and that Mr. Huntington had himself so sworn in this court, and said agreement was never signed.

SYDNOR HALL.

Subscribed and sworn to before me this 13th day of July, 1886.
[SEAL.] P. N. MYERS,
*N. P., K. C.*

And on the 15th day of July, A. D. 1886, the affidavit of C. L. Brown was filed herein. Said affidavit is in words and figures as follows, viz:

78 *Affidavit of Chas. L. Brown.*

THE STATE OF KENTUCKY, }
*Kenton County,* } *sct:*

United States Circuit Court, District of Kentucky.

GEO. T. BLISS *et al.*, Complainants,
*vs.*
THE KENTUCKY CENTRAL RAILROAD CO., Defendant.

Charles L. Brown says he is general freight agent of the Kentucky Central railroad, with his office at Covington, Kentucky; that on or about the 15th day of May, 1886, he received a communication from C. W. Keith (herewith filed); that on the next day following, Monday, affiant met said Keith, and said Keith said to affiant that he desired live stock consigned to him to Covington to be delivered at the general freight depot at Covington; that thereupon chutes were prepared and arrangements made for such delivery, and such delivery was so made except during the pendency of an injunction suit in the Kenton chancery court of Kentucky, wherein the Covington Stock-Yards Company was complainant, beginning about June 4, 1886; that pending said suit and until its discontinuance (about June 14, 1886), affiant in good faith believed that there was an injunction against delivering live stock in Covington elsewhere than at said stock-yards, and same were so delivered; but afterwards, so far as affiant knows or believes or is informed, all live stock consigned to said Keith, or to the firm of Keith and Wilson, of
79 which he is a member, were delivered at said general freight depot; that there is a chute and graded way and ample facilities for such delivery at said place; that employees of said railroad are instructed to receive at said place and care for and safely deliver to said Keith all live stock consigned to him *to* Covington, and have so done, so far as affiant knows or is informed or believes.

Affiant says there is no other convenient place in Covington than the said general freight depot and the Covington stock-yards for the loading and unloading of live stock; that it is more convenient to the operation of said railway to receive and ship such stock at the general freight depot than the place designated by said Keith, next

to the Covington stock-yard chutes, because affiant says the standing of cars at said Keith's proposed chutes would interfere with the running of trains to load and unload at said Covington stock-yards; that the usual hours of arrival of live stock at Covington, to wit, early in the morning are such that there are no vehicles, locomotives, or passers-by to interfere with their safe delivery nor any delay therein.

CHAS. L. BROWN.

Subscribed and sworn to before me this 14th day of July, 1886.

[SEAL.] P. N. MYERS,
*N. P., K. C.*

The notice mentioned in the foregoing affidavit is in words and figures as follows, viz:

To H. E. Huntington, superintendent and receiver of the Kentucky Central R. R. Co., and also said Kentucky Central R. R. Co.:

You are hereby notified that I am, and my employees and consignors are, largely employed in the shipping of live stock, such as sheep, hogs, & cattle, and other stock from the interior of Ky. to the city of Covington, county of Kenton, and State of Kentucky, over said railroad, and that you have hitherto been in the habit, and against my objection and protest, of delivering stock owned by me, and stock consigned and shipped to me over said railroad, to be delivered to me at said city of Covington, into the possession of and custody of the Covington Stock-Yd. Co., at Covington, and that said company, without my consent and against my objection, detain said stock, and declares it will continue so to do, in its yards unless and until I pay to it what is called lottage—that is, five cents per head on sheep, six cents on hogs, ten cents on calves, and twenty-five cents on all other kinds of cattle; which sums said company — on such stock so owned by me and consigned to me and so brought to this city, and which sums on such stock I have by said company been compelled to pay in order to obtain possession of such stock. You are therefore hereby notified hereafter to deliver no stock so brought to this market, owned or consigned to me, to said company, but you are hereby required in every such case to deliver
81 such stock to me at such convenient place in said city as you may designate, free from all charges of every kind and nature against me or said stock after it leaves your cars and track, either of lottage or of any nature or kind whatsoever.

Cov., Ky., May 14th, 1886.

C. W. KEITH.

Witness:
E. W. WILSON.

Delivered to Charles Brown May 15th, 1886.

E. W. WILSON.

And on July 15th, 1886, the affidavit of W. P. Walker, Jr., was filed herein. Said affidavit is in words and figures as follows:

*Affidavit of W. P. Walker, Jr.*

THE STATE OF KENTUCKY, }
*Kenton County,* } *sct:*

United States Circuit Court, District of Kentucky.

GEO. T. BLISS *et al.*, Complainants,
*against*
THE KENTUCKY CENTRAL RAILROAD CO., Defendant.

W. P. Walker, Jr., says he is agent of the Kentucky Central railroad at Covington, Kentucky, and has charge of the freight depot at Covington, and has so had charge since June 22, 1886; that since that day, so far as this affiant has any knowlege or information, no live stock shipped on the Kentucky Central railroad to Charles W. Keith or to the firm of Keith and Wilson, consisting of said Keith
82 and one E. W. Wilson, or to any concern wherein said Keith was interested, has been delivered otherwise than at the general freight depot in Covington; that at all times since said day the said railroad has been ready, able, and willing to deliver live stock to said Keith at said place, and has there delivered to him all consigned to him to Covington, so far as affiant knows, since said day; that on the 23rd day of June, 1886, affiant received from H. E. Huntington, receiver, written instructions (herewith filed) that all live stock consigned on said road to said Keith should be delivered to him at the Covington depot, and that necessary arrangements therefor should be made; that a chute was prepared for such delivery, being an apron or platform of the usual width of stock chutes, with railings firmly set on each side, the whole fitting in the usual car door; that the platform provided for such delivery is the height of the average car door, and connects immediately with a roadway of gentle grade to the general street level, and that delivery of stock at said place is safe and practicable; that the Kentucky Central railroad has no concern with stock shipped to Covington over the Louisville & Nashville or any other road, except that the Kentucky Central charges such other road the fixed rate of one dollar per car for switching on its road from the South Covington junction, but it neither receives consignments from or for such other roads,
83 and is not an agent for them, nor has any agent authorized to contract for them; that on June 26, 1886, a consignment of one cow and calf for said Keith arrived at about 6.30 p. m., and notice was immediately sent to said Keith thereof at his place of business, but his son, being in charge, refused to receive same, and said Keith was searched for until found, and he then returned an answer in writing, herewith filed, and thereupon said cow and calf were unloaded by the employees of said Huntington, receiver, and cared for until seven o'clock next morning, when said Keith took same away; that there has never been any lack of care on the part of any of said employees in the delivery to said Keith of stock consigned to him, nor any delay in delivery of such, nor any injury to him or his consignors, nor, so far as affiant knows or is informed or

believes, any diversion of any such consignments to the Covington stock-yards.

Affiant says there is no other convenient place (except the Covington stock-yards) for the delivery of live stock to said Keith; that the grade before mentioned is the same used by heavily-freighted wagons going in the depot; that at the usual hours for receiving stock there are no wagons in the way, nor any locomotive standing on the street, and that locomotives are never permitted to stand at the street-crossing longer than five minutes; that special employees have been provided to receive said Keith's freight at night.

84 W. P. WALKER, JR.

Subscribed and sworn to before me this 13th day of July, 1886.

[SEAL.] P. N. MYERS,
*N. P., K. C.*

And to which affidavit the following were attached, to wit:

*Notice.*

COV., KY., *June 26th*—9 o'clock p. m.

Mr. W. P. Walker:

Please put the cow and calf off in your pens at the city depot, where they will be at your risk until 7 o'clock to-morrow morning, when I will send for them.

Yours resp., C. W. KEITH.

*Live Stock Consigned to C. W. Keith.*

OFFICE OF THE RECEIVER,
COVINGTON, KY., *June 23rd*, '86.

W. P. Walker, Jr., Esq., agent, city.

DEAR SIR: Please note that on and after to-day all live stock consigned to Mr. Keith, originating on the line of the Kentucky Central railroad and consigned to Mr. Keith at this point, must be delivered at the Covington depot. Stock coming off the L. & M. or other roads for Mr. Keith will be delivered to the Covington stock-yards. Please note same and make the necessary arrangements for handling stock at depot and collecting freight for same.

85 Yours truly, H. E. HUNTINGTON, *Receiver.*

And on the 23rd day of July, A. D. 1886, a written opinion of the court was filed herein; which said opinion was in words and figures as follows, viz:

GEO. T. BLISS *et al. vs.* KY. CENTRAL R. R. CO. *et al.*

This case comes before me on the rule against H. E. Huntington, receiver, to show cause why he has not obeyed the order of this court entered June 22d, '86, and also on motion of Charles W. Keith to amend the order entered June 22nd, 1886, by limiting the delivery of stock, as therein directed, to the said C. W. Keith "to the

depot of the Kentucky Central Railroad Company, in the Covington stock-yards, free from charges to be made thereon for passing through said stock-yards by said stock-yards company, or at the platform and chute erected by said Keith on his own land adjacent to the live-stock switch of said railroad company and north of said Covington stock-yards."

The order entered June 22nd, 1886, directed [that] the receiver should receive from Keith and deliver to him live stock "in the live-stock yards of the Covington Stock-Yards Company, or at the platform erected by said Keith on his own land near the said
86 Covington stock-yards, or at any other convenient and suitable point to be provided by the said receiver or by said Keith in case the receiver shall fail to so provide."

It appears from the response of the receiver and from the affidavits read that the live stock consigned to Keith is delivered to him at the R. R. freight depot.

The receiver claims that, although this is not entirely convenient to either the R. R. Co. or Keith, it is the most convenient and suitable place to make the delivery, excepting the yards of the Covington Stock-Yards Co., and that it is much more convenient for the R. R. Co. than to deliver or receive live stock at Keith's own yards. I am not satisfied from the evidence that Mr. Huntington has violated the order entered June 22, '86, but think the evidence strongly tends to show the freight depot as now arranged is inconvenient and, to a considerable extent, unsuitable either to receive or deliver live stock from or to shippers, and that there is still a practical discrimination against Keith as a shipper of live stock over this road. The affidavits prove that the stock-yards which are now controlled by the Covington Stock-Yards Company has been the depot for the receipt and delivery of all live stock by the Ky. Central R. R. Co. for more than twenty years.

It does not show whether the R. R. Co. or a third party controlled this yard prior to the contract with the Covington Stock-Yards Company dated November 19th, 1881. That contract pro-
87 vides that the R. R. Co. will make the company's yards its depot for the delivery of all of its live stock, and during the term of the contract—fifteen years—the R. R. Co. will not "build nor allow to be built any other depot or yards for the reception of live stock," thus giving the yards company an exclusive right to receive all of the live stock shipped over the railroad. This contract provides that the charge for loading and unloading the live stock shall be paid by the R. R. Co., but is silent as to what is known as "lottage," and has no provision directly prohibiting a charge of this kind against the shippers. It appears from the affidavits that the yards company still insist upon its right to charge lottage on stock delivered through its yards, but in fact it makes no charge, except for stock owned or consigned to Keith. This, I think, is an unjust and illegal discrimination, and one which a common carrier should not be allowed to make, either directly or indirectly. McCoy *vs.* C., I., St. L. & C. R. Co., 13 Fed. Rep., 3.

That case is distinctly in point, and the principal which it an-

nounces must have been affirmed in the order of June 22nd by his honor Judge Jackson. I do not find that the principle of the McCoy case has been overruled by the Supreme Court, but the reasoning of the court in recent cases rather sustains it. See A., T. & S. R. R. *vs.* D. & N. O. R. R., 110 U. S. R., 668; Express Cases, 117 U. S. R., p. 3.

I do not intend to construe the contract of Nov. 19th, 1881,
88 and to determine that under it the parties intended the yards company should have the right to charge lottage to shippers who received their stock through its yards, but in considering the present motion to modify the order entered June 22, 1886, I have assumed this right was not by the contract taken from the yards company.

This may or may not be the proper construction, and it is intended to be left open for further determination. After considering the matter carefully I have concluded to modify and change the order of June 22, 1886, so as to direct the receiver to deliver stock consigned to Keith or owned by him at and through the platform and yards of the Covington Stock-Yards Company, leaving the question of the right of said company to a reasonable lottage for said stock to be hereafter determined by this court upon proper issue made.

This, however, is not to be done without the written consent of said yards company, and in the event it consents Keith shall execute bond, with good surety, to pay to said Co. the amount of lottage, if any, which may be adjudged against him. If said stock-yards Co. shall not consent in writing to be delivered to said receiver, to receive and deliver said live stock to said Keith, as herein indicated, within two days after the filing of this opinion, then the receiver will be directed to deliver to said Keith stock owned by or consigned to him at the platform and chute which Keith has
89 or may erect on his own land adjacent to the live-stock switch of the railroad company and north of said Covington stock-yards, but said Keith must at his own expense prepare said platform and chute for the receipt and delivery of live stock owned by or consigned to him, so as to be as convenient and practicable to the railroad company in receiving and delivering live stock at same. If the yards company consents to receive and deliver stock as herein indicated, a proper bond will be prepared by counsel of Keith, and be as to form approved by the counsel of the yards company, and then executed by Keith, with surety worth $8,000, before the clerk of the court, and the security to be approved by him. In the event no such consent is given by said yards Co. the receiver will proceed to deliver and receive live stock of Keith's as herein directed, after a proper and suitable platform and chute is prepared by Keith, and in the meantime will continue to receive and deliver live stock owned or consigned to Keith as now. It is intended these instructions shall include all live stock owned or consigned to Keith which come over any part of the road or roads now under the control of the receiver, including those coming from connecting lines such as the L. & N. R. R. Co., &c.

JNO. W. BARR.

And on July 26th, A. D. 1886, the following motion of the Covington Stock-Yards Company was filed herein, viz:

90 *Motion.*

United States Circuit Court, District of Kentucky.

GEO. T. BLISS *et al.*, Complainants,
*versus.*
THE KENTUCKY CENTRAL RAILROAD CO., Defendant.

The Covington Stock-Yards Company moves the court to require Charles W. Keith to respond to its pleadings herein on or before the first Monday in August, 1886, or such other day as the court may fix, or have the intervening pleading of said company against him taken for confessed.

HALLAM & MYERS,
*Solicitors for Stock-Yards Co.*

And on July 26th, A. D. 1886, the consent of the Covington Stock-Yards Company was filed herein; which said consent is in words and figures as follows, viz:

*Consent of Covington Stock-Yards Company.*

United States Circuit Court, District of Kentucky.

GEO. T. BLISS *et al.*, Complainants,
*versus*
THE KENTUCKY CENTRAL RAILROAD CO., Defendant.

The Covington Stock-Yards Company, respectfully protesting and saving exception, pursuant to the order of court of July 23, 1886, hereby consents that stock consigned to Charles W. Keith or owned by him may be delivered at and through the platform and
91 yards of the Covington Stock-Yards Company, subject to the right of said company to reasonable lottage or charges, to be hereafter determined, such delivery to be upon condition that said Keith first execute bond to said company, with good surety, worth $8,000, in form approved by counsel for said company, the bond to be executed before and approved by the clerk of this court, and conditioned that said Keith will pay to said company the amount of such lottage or charges, if any, which may be adjudged against him.

THE COVINGTON STOCK-YARDS CO.,
By W. A. PETER, *Sup't.*

And on the 26th day of July, A. D. 1886, the following order [was] entered herein, viz:

GEO. T. BLISS and ISAAC E. GATES, Trustees,
*vs.*
THE KENTUCKY CENTRAL RAILROAD COMPANY, &c.

It now appearing to the court that the Covington Stock-Yards Company, having leave of this court to intervene for its own inter-

est in this cause upon an information styled petition of Charles W. Keith against H. E. Huntington, receiver of the Kentucky Central Railroad Company, did, on the 26th day of June, A. D. 1886, file its interpleader herein; it is ordered by the court that a copy of said interpleader be served upon said H. E. Huntington, receiver, and said Charles W. Keith, and that said Huntington & Keith aforesaid be and they are required to answer said interpleader on or be-
92 fore the September rules of this court.

And on the 29th day of July, A. D. 1886, an order entered herein; which said order is in words and figures as follows, viz:

GEO. T. BLISS and ISAAC E. GATES, Trustees,

*vs.*

THE KENTUCKY CENTRAL RAILROAD COMPANY, &c.

This day came Chas. W. Keith, by his attorneys, Mess. O'Hara and Bryan, and by leave of court now files his demurrer to the interpleader of the Covington Stock-yards Co. heretofore filed herein, to wit, on June 26th, 1886.

The demurrer mentioned in the foregoing order is in words and figures as follows, viz:

*Demurrer of Keith to the Interpleader of the Covington Stock-Yards Co.*

United States Circuit Court, District of Kentucky.

GEO. T. BLISS, &c., Complainants,

*against*

THE KENTUCKY CENTRAL R. R. CO., Defendant.

Charles W. Keith now comes, by his solicitors, O'Hara & Bryan, and demurs to the interpleader of the Covington Stock-Yards Company, and for cause of demurrer showeth—

1st. There no sufficient allegations in said interpleader of the Covington Stock-Yards Co. to show to the court that there is
93 any matter of controversy between the said stock-yards Co. and this demurrant of which this court should take cognizance in this proceeding, or should render any decree granting any manner of relief to the said stock-yards company in the premises against this demurrant.

2nd. The said interpleader does not contain any allegation that this demurrant has at any time made application to or demanded that the said stock-yards company should do or perform any services to or for him in the line of business for which said company was or is authorized by its charter to do, whereby it should be entitled to demand or receive from the demurrant any compensation, in money or otherwise; nor is there any allegation therein that this demurrant is in anywise party or privy to the alleged contract between said stock-yards company and the Kentucky Central Railroad Company of date 19 November, 1881, nor of any fact which in law should

hold this demurrant in any manner affected by the terms of said contract.

3rd. The said contract, so far as it stipulates that the said railroad company will not construct, or permit to be constructed, on its right of way any other depot platform or chute than that of the said stock-yards company for the reception of live stock going or coming over said road, from or to Covington, is contrary to the public duty of said railroad company and void in law, and the said railroad company is neither bound to or justified in delivering live
94 stock owned by or consigned to this demurrant to said stock-yards company, whereby said stock-yards company may have any demand against this demurrant for passing stock through the lots of said company against his consent, nor to require demurrant to pass through the yards of said company any such stock intended by him for shipment over said road, whereby the said stock-yards company would have any such demand or charges against demurrant, and he prays the judgment of the court thereon.

O'HARA & BRYAN,
*For Keith.*

J. O'Hara, one of the above-named attorneys for said Chas. W. Keith, says he believes the foregoing demurrers are well founded in point of law.

J. O'HARA.

The undersigned, Chas. W. Keith, demurrant, says the foregoing demurrers are not interposed for delay, but in good faith, for the determination of the questions of law arising thereon.

C. W. KEITH.

Sworn to by C. W. Keith before me this 29 day of July, 1886.

JOS. C. FINNELL,
*U. S. Clerk.*

And on the 30th day of July, A. D. 1886, the following notice was filed herein, viz:

*Notice.*

United States Circuit Court, District of Kentucky.

GEO. T. BLISS, &c., Complainants,

*vs.*

THE KENTUCKY CENTRAL R. R. CO., Defendant.

95 H. E. Huntington, receiver herein, and Messrs. Hallam & Myers, his solicitors, are hereby notified that Charles W. Keith will, on Friday, the 30th inst, at chambers, in the United States court-house in Louisville, Kentucky, at 10 o'clock a. m., move his honor Jno. W. Barr, judge of said court, to modify his opinion, filed herein on the 23 inst. in the proceeding heretofore instituted by said

Keith against said receiver, so as to relieve said Keith from the requirement therein to execute bond to said Covington Stock-Yards Company to secure the payment of lottage to said company:

1st. Because said stock-yards company did not execute and deliver its written consent, required in said opinion, to said receiver within the prescribed time.

2nd. Because the said Keith has not demanded of the said stock-yards company the right to pass stock through the said company's yards.

3rd. Because the said railroad company and the said receiver in charge of its affairs is in law bound to receive from said Keith all stock offered by him for shipment over said road and to deliver to him all stock owned by or consigned to him and transported over said road, and to provide a suitable place and means to load and unload such stock on and off the cars without other expense or charge to him than the customary transportation charges.

4th. Because the amount of said bond is excessive and
96 greatly disproportionate to the probable liability thereon and embarrassing to his business.

He will also, at the same time and place, move said judge to direct said receiver to deliver to him all stock owned by or consigned to him and transported over said road, and to receive from him all stock offered by him for shipment over said road, at the said Keith's own platform and chute already erected, adjacent to the live-stock switch from which all stock brought to or taken from the Covington stock-yards is received and discharged, on the ground that said platform and chute are equally as convenient and suitable to said receiver as the platform and chutes of the Covington stock-yards, and the ground on which they are built was purchased and the platform and chute erected by said Keith on the faith of the agreement of said receiver that if said Keith would procure said ground and erect said platform and chute he, said receiver, would so receive and deliver stock from and to said Keith at that place instead of at the said Covington stock-yards, where said Keith would be subject to the demand of the said stock-yards company for lottage charges or at the said city depot, which was and is inconvenient to the said receiver as well as said Keith.

He will also, at the same time and place, move said judge to require said receiver to instruct his station agents along the line of said road to permit all persons desiring so to do to consign
97 and bill their stock offered for shipment over said road to the said Keith or to his, said Keith's, stock-yards in Covington, and to give said receiver such other instructions in regard to the receipt, transportation, and delivery of stock offered for shipment by or owned or consigned to said Keith and transported over said road and its connections or to be transported thereover as will place said Keith in respect thereto on the same footing with others, and prevent discriminations against him and his business by said receiver

or others acting under his authority in operating said Kentucky Central railroad under the order of the said court.

July 28th, 1886.

C. W. KEITH,
By O'HARA & BRYAN,
*His Att'ys.*

And on the 30th day of July, A. D. 1886, the affidavit of R. Carroll was filed herein. Said affidavit is in words and figures as follows, to wit:

*Affidavit.*

United States Circuit Court, District of Kentucky.

GEO. T. BLISS *et al. vs.* THE KENTUCKY CENTRAL R. R. Co.

Richard Carroll says he is general superintendent of the Cincinnati, New Orleans and Texas Pacific Railroad Company, with headquarters at Cincinnati, Ohio; that he has examined a plat of the Covington stock-yards railway and adjacent premises said to have been preparad by C. L. Jungerman, civil engineer, and it is
98 affiant's opinion that it is not reasonably practicable *practicable* to load and unload live stock both at the Covington stock-yards and at the platform of C. W. Keith, as both are indicated on said plat; that the standing of cars at either platform would seriously interfere with loading and unloading at the other.

R. CARROLL.

Sworn to before me and subscribed in my presence this 29 day of July, A. D. 1886.

[SEAL.] FRANK HEINSHEIMER,
*Notary Public, Hamilton Co., Ohio.*

And on the 30th day of July, A. D. 1886, the affidavit of Harvey Myers was filed herein. Said affidavit is in words and figures as follows, viz:

*Affidavit.*

United States Circuit Court, District of Kentucky.

GEO. T. BLISS *et al.*, Complainants,
*vs.*
THE KENTUCKY CENTRAL R. R. Co., Defendants.

Harvey Myers says he is a member of the firm of Hallam & Myers, counsel in this cause; that he was in the office of said firm all of Friday, the 23rd day of June, 1886, and that — afternoon of said day a copy of the order of court, filed on said day in this cause, was left at said office by the clerk of said court, which was the first knowledge or information affiant had of the filing thereof, and after the receipt of said copy T. F. Hallam, who has been attend-
99 ing particularly to this cause, did not return to his office, and affiant was unable to find him; that he delivered said copy

to said Hallam on Saturday, July 24, 1886, and that he, the said Hallam, thereupon prepared the consent of the Covington Stock-Yards Company to receive stock consigned to C. W. Keith, under said order, and delivered same to this affiant to be copied and filed, and that this affiant, shortly before five o'clock on the afternoon of said day, took it to the office of the clerk of this court to file it (H. E. Huntington, receiver of the Kentucky Central Railroad Co., being absent from Covington), but found said office closed; that he filed said consent in said office at eight o'clock Monday morning, July 26, 1886, procured a certified copy thereof from the clerk, and caused it *to* at once to be delivered to said receiver.

HARVEY MYERS.

Subscribed and sworn to before me by the said Harvey Myers this July 27th, 1886.

[SEAL.] P. N. MYERS,
*N. P., K. C.*

And on the 30th day of July, A. D. 1886, the affidavit of H. E. Huntington was filed herein; which said affidavit is in words and figures as follows, viz:

*Affidavit.*

United States Circuit Court, District of Kentucky.

GEO. T. BLISS *et al.*, Complainants,

*vs.*

THE KENTUCKY CENTRAL R. R. Co., Defendant.

100 H. E. Huntington says he is the receiver of the defendant, The Kentucky Central Railroad Co., and that he was absent from his office and from the city of Covington, Kentucky, and Kenton county, Kentucky, all day of Saturday, July twenty-fourth, 1886, but returned said evening about eight o'clock, and shortly thereafter met Mr. T. F. Hallam in Cincinnati, Ohio, who informed him of the order entered herein on the twenty-third day of July, 1886, which information was the first he had thereof; that the said Hallam at the same time informed him that the Covington Stock-Yards Company had that day filed its consent under said order to receive the stock of C. W. Keith, and instructed him, this affiant, to act accordingly.

H. E. HUNTINGTON.

Subscribed and sworn to before me by the said H. E. Huntington this 29 day of July, 1886.

[SEAL.] P. N. MYERS,
*N. P., K. C.*

And on July 30th, A. D. 1886, the affidavit of Joseph C. Finnell was filed herein. Said affidavit is in words and figures as follows, viz:

*Affidavit.*

United States Circuit Court, District of Kentucky.

GEO. T. BLISS *et al.*, Complainants,
*versus*
THE KENTUCKY CENTRAL R. R. Co., Defendants.

Joseph C. Finnell says he is clerk of the United States
101 court at Covington, Ky., and that on Monday, the 20th day of July, 1886, at eight o'clock a. m., Harvey Myers filed in the office of the United States courts at Covington the consent of the Covington Stock-Yards Company to receive stock consignedt o C. W. Keith, under the order filed in said office July 23rd, 1886, and that he thereupon made and delivered to said Myers a certified copy of said consent.

JOS. C. FINNELL.

Subscribed and sworn to before me by said Joseph C. Finnell this 29th day of July, 1886.

CHAS. G. MAY,
*D. C., U. S. C. C., Ky. Dist.*

And on July 30th, A. D. 1866, the statement of C. L. Jungerman was filed herein. Said statement is as follows, viz:

THE STATE OF KENTUCKY, } *sct:*
*Kenton County,* }

Charles L. Jungerman says he is a civil engineer, and that the accompanying plat of the Covington stock-yards and railway and adjacent premises, and the dimensions given on said plat, are correct.

C. L. JUNGERMAN.

And on the 30th day of July, A. D. 1886, an order entered herein; which said order is in words and figures as follows, viz:

GEO. T. BLISS and ISAAC E. GATES, Trustees,
*vs.*
THE KENTUCKY CENTRAL RAILROAD COMPANY, &c.

The Covington Stock-Yard Company having consented
102 to receive and deliver live stock owned or consigned to Keith on the terms indicated in the opinion of the court filed July 23rd, 1886, it is now ordered, by consent of the Covington Stock-Yards Company and Charles W. Keith, that instead of the execution of the bond by said Keith, as is provided in said opinion, the Covington Stock-Yards Company shall execute to said Keith, the receiver herein, and the Ky. Central Railroad Company a bond, with surety worth eight thousand dollars, conditioned that said company shall refund to said Keith such lottage and charges as shall be collected from him illegally or wrongfully on stock consigned to or by him at the Covington stock-yards, and also so conditioned as to indemnify the receiver and the Kentucky Central Railroad Com-

pany and hold them harmless against any claim of said Keith for or on account of such illegal or wrongful lottage or charges, and it is ordered that said bond shall be executed and filed with the clerk of this court within five days after the day of the filing of this order, and upon the execution of said bond H. E. Huntington, receiver herein, until the further order of the court, will receive from said Keith all stock offered by him at Covington for shipment over the Kentucky Central railroad and its connecting lines, and that he will deliver to said Keith all live stock owned by said Keith or consigned to him and transported over said road, whether originally shipped thereon or coming to said road from connecting roads, and
103 said receiver shall allow all persons offering so to do to consign and bill live stock to said Keith or his stock-yards in Covington. Such receipt and delivery may be at and through the said Covington stock-yards upon the payment of the reasonable charges and lottage as provided herein. It is further ordered that the receiver shall make no discrimination between the shippers of live stock in the receipt and delivery of the same.

And on the 3rd day of August, A. D. 1886, a bond was filed herein by the Covington Stock-Yards Company; which said bond is in words and figures as follows, viz:

*Bond.*

United States Circuit Court, District of Kentucky.

GEO. T. BLISS *et al. vs.* THE KENTUCKY CENTRAL RAILROAD CO.

We, The Covington Stock-Yards Company, principal, and John E. Norris, surety, hereby covenant to and with Charles W. Keith and the Kentucky Central Railroad Company and H. E. Huntington, receiver of said railroad company, that said Covington Stock-Yards Company will refund to said Charles W. Keith all lottage and charges illegally or wrongfully collected from said Keith by said stock-yards company upon live stock hereafter consigned to or by said Keith, or to his stock-yards at Covington, Kentucky, and will indemnify and hold harmless the said railroad company and
104 receiver against any and all claim of said Keith against them, or either of them for or on account of such wrongful or illegal collections.

Given under our hands this third day of August, 1886.

COVINGTON STOCK-YARD CO.,
JOHN E. NORRIS, *Pres.*
JOHN E. NORRIS.

Endorsed.

The within bond executed under order of court of date July 30th, 1886, is now approved.

Witness my hand as clerk of U. S. circuit court this Aug. 3rd, 1886.

JOS. C. FINNELL, *Clerk.*

And on the 29th day of September, A. D. 1886, an order [was] entered herein; which order is in words and figures as follows, viz:

GEO. T. BLISS and ISAAC E. GATES, Trustees,
*vs.*
THE KENTUCKY CENTRAL RAILROAD COMPANY, &c.

This cause coming on to be heard upon the demurrer of C. W. Keith to the interpleader of the Covington Stock-Yards Company, *and* was argued by counsel. And the court, being fully advised in the premises, finds that said demurrer is not well taken and overrules the same; to which ruling said Keith excepts.

It is further ordered that said Keith have until the next succeeding rule day of this court in which to file answer to said interpleader.

105 And on a day following came H. E. Huntington, receiver herein, and filed a written statement; which said statement is as follow, viz:

*Statement of Receiver.*

United States Circuit Court, District of Kentucky.

GEORGE T. BLISS *et al.*, Complainants,
*vs.*
THE KENTUCKY CENTRAL R. R. Co., Defendant.

H. E. Huntington, receiver in this cause, respectfully shows to the court that he is informed and believes that it was stated in argument of a demurrer to a cross-pleading between the Covington Stock-Yards Company and Charles W. Keith, in this cause, that this receiver had forced said Keith to receive and ship all his live stock through the yards of said stock-yard company and was acting as a partisan for said company in said controversy.

He, the said receiver, respectfully shows further to the court that it is not true that he ever forced or endeavored to force said Keith, or any one, so to ship or receive live stock, but that prior to the origin of this controversy he had unwittingly consented to deliver live stock to said Keith at a place of his own selection, which this receiver afterward discovered to be impracticable in view of the necessities of the general business of said railway; that after said consent was given this receiver was advised that it was his legal duty to respect and observe the contract be-
106 tween the Kentucky Central Railway Company and said stock-yards company until otherwise instructed by his court; that thereupon he left said parties to litigate said controversy without interference on his part, and at the special instance and absolute request of said Keith, and with his express consent, provided a chute, gangway, and sufficient and suitable facilities of all kinds for the reception and shipment by said Keith of live stock at the general freight depot of said railroad without charge, and retained and cared for his live stock at said place all night without charge (contrary to the usual course of business), because said Keith so demanded.

This receiver says that said Keith causelessly became dissatisfied with said compliance with his own request and orders, and caused a rule to be issued out of this court, returnable before Hon. Jno. W. Barr at Louisville, seeking to punish this receiver for an alleged contempt of this court's first order herein; that this receiver appeared in response to said rule, and testimony was taken by affidavit and orally; and thereupon it appeared to the court that no such contempt had been committed; that thereupon said Keith amended his complaint and moved the court to modify said first order so as to require this receiver to deliver and ship live stock for said Keith at the place of his (Keith's) selection, which modification, however, was not granted; that thereupon said Keith moved the court to
107 require this receiver to ship and deliver his live stock through the property of the said stock-yards company free of charge, and the court granted said order upon the condition that said Keith should give bond to pay said stock-yard company its due and proper charges in case it should be determined in this cause that said Keith was liable for such charges; that he failed and refused to gave such bond, and thereupon said stock-yards company voluntarily offered to receive and ship such stock, collecting charges therefor, and executed bond therefor payable to said Keith when it should be determined that he was not liable therefor; and an order accordingly was entered, with the consent of said Keith, in open court, which order is still in full force, and said Keith has been acting thereunder ever since. Said matters have been litigated between said Keith and stock-yards company without any interference by this receiver and without even his personal appearance, or appearance by counsel, until required by the court to appear at Louisville.

Finally, he says he is still prepared to receive and ship stock for said Keith without charge, at the general freight depot, if the court shall deem said Keith not bound by said consent order, but he has no possible control over the stock-yards to compel free facilities for Keith thereat.

He respectfully asks to be discharged from any imputation of contempt or discrimination against said Keith.

108 H. E. HUNTINGTON.

Subscribed and sworn to before me by H. E. Huntington this 1st day of October, 1886.

[SEAL.] HARVEY MYERS,
*Notary Public, Kenton Co., Ky.*

And on October 1st, A. D. 1886, the answer of C. W. Keith to the interpleader of the Covington Stock-Yards Company was filed herein; which said answer is in words and figures as follows, viz:

*Answer of C. W. Keith to Interpleader of Covington Stock-Yards Company.*

United States Circuit Court, District of Kentucky.

GEO. T. BLISS, &c., Complainants,
*against*
THE KENTUCKY CENTRAL RAILROAD COMPANY, Defendant.

The said Charles W. Keith, in answer to the petition or bill of interpleader of the said Covington Stock-Yard Company filed herein 26th June, 1886, says he was and is in no way party or privy to the alleged contract of date the 19th November, 1881, between the said defendant, The Kentucky Central Railroad Company.

He says he has not since on or about the first day of March last past asked or demanded of the said stock-yards company "to receive, ship, house, feed, or to care for any live stock" owned
109 or control-ed by him at the said yards of the said company in the city of Covington.

He says that he has been since on or about the date last aforesaid the owner and occupyer of certain stock-yards and pens equally suitable with those of the said stock-yards company for housing, feeding, and caring for live stock, provided also with suitable scales for weighing said live stock, and otherwise provided with all necessary and suitable conveniences to accommodate buyers and sellers of such live stock, and from that date to the present has been using his said yards and pens for that purpose in doing business in the live-stock brokerage for others and also on his own account, out of which he has made and still makes profit, and he says that during the period aforesaid he has been accustomed to receive at and through the yards of said company live stock of his own and that of others consigned to him and brought to Covington by the Kentucky Central Railroad Company, and up to and about the 8 day of May last past neither he nor those who consigned stock to him or his said yards or lots were required either by said stock-yards company or said railroad company to pay any charge whatever for unloading said stock from the trains on said railroad or for passing the same through said yards and lots of said stock-yards company, especially neither he nor they were required to pay that charge which is termed "lotage."

He says, however, since the said 8th day of May, he and
110 those shipping or consigning live stock to him or his yards or lots, and brought to the said city of Covington over the said railroad, have been required by said stock-yards company and the said H. E. Huntington, receiver of said railroad company, with said stock-yards company, to pay "lotage" on all stock received through the lots and yards of said company, but unless the said stock were taken to the yards or lots of said Keith neither he nor his consignors were required to pay said "lotage" charge. He therefore says it is not true, as alleged by the said stock-yards company, that it has not discriminated or made undue charges against the said Keith and others, the consignors of said Keith; and he

denies that the said stock-yards company has performed those duties incumbent upon it by its charter towards the public, because he says it has made, and declares its purpose to continue to make, discriminations as aforesaid against the said Keith and his consignors as aforesaid in the matter of charging them "lotage" on live stock passing through its said yards from the said railroad to the public highway when destined for the yards or lots of said Keith.

He denies that he intended to injure the said stock-yards company in any of its rights under the said contract with the said railroad company, or otherwise, by the erection of said platform and chute on the right of way of the said railroad company, adjoining or adjacent to the platform and chutes of said company.

111 He says the said company had no right under its contract, or otherwise, that was in any manner impinged by the act aforesaid of this respondent. He says that after the 8 day of May aforesaid, upon the said stock-yards company demanding and requiring the payment of "lotage" by this respondent and his consignors as aforesaid, he remonstrated against the same with said receiver, and thereupon the said receiver, recognizing the justice of respondent's complaint, agreed with respondent, if he would provide a suitable place in the city of Covington to receive from the trains on said railroad such live stock as might be consigned to him, and this respondent having acquired the land on which he did erect said chute, and connected the same with the same switch of said railroad upon which the trains are received, and from which all live stock then and theretofore and now brought to Covington and received by said railroad company for shipment from Covington are unloaded into the yards and lots of said stock-yards company, and the same were complete and ready for use, without the expression of any dissent by the said receiver, but upon his express agreement and consent, and the same was and is just as convenient, both to the said railroad company and any shipper who might wish to use it, as the platforms and chutes of the said stock-yards company for the purpose of taking live stock on or off said railroad.

112 This respondent says that the use of the platform and chute erected by him as aforesaid in loading and unloading live stock from or on the trains of said railroad company would injure the said stock-yards company in any right it has under said contract, because he says there was no stipulation or agreement with said receiver and this respondent that the receiver should not pay the said stock-yards company the fee stipulated in said contract to be paid by the railroad company for loading or unloading the stock brought by the railroad company to Covington.

Respondent denies that he stipulated with the said receiver, or contemplated the loading or unloading of live stock at his said chute for others than himself, except such as should consign their live stock to him or his said yards or lots, and denies that he ever demanded that he should be allowed by the receiver to use his said platform and chute for that purpose.

He denies that the said stock-yards company's yards and lots are the most convenient place in said city for the purposes intended,

but he says they are sufficiently convenient, and he is willing, and at all times has been, that stock owned or consigned to him and brought over said railroad may be delivered to him through said yards, provided he or his said consignors shall not be required to pay lottage or other charges thereon than the customary freight charges for transportation thereof.

113 He denies that the general freight and passenger depot of said railroad company is a suitable or convenient place to the said company or to the shippers of live stock for the receipt or delivery of such. He says said road has been in operation for over thirty years, and said general freight and passenger depot has not at any time been used as a live-stock depot, but the said railroad company had and maintained a live-stock depot upon the very same ground on which said stock-yards company now have their yards and lots for about twenty years before the establishment of said stock-yards by said stock-yards company.

Wherefore respondent prays that the petition of the said stock-yards company may be dismissed.

He says that since the said 8 day of May, up to the 3d day of August last past, he has paid, under protest, to the said stock-yards company, on account of charges for lottage on live stock consigned to him and his yards and delivered against his consent by the receiver herein to said stock-yards company, the sum of $253.60, without the payment of which said charges the said company refused to deliver him said stock. He further says that on the said 3 day of August the said stock-yards company, pursuant to an order of the court, executed its bond binding itself to refund to the respondent all

114 such lotage as he would pay to said company on account as aforesaid, in the event this court should decide that said charges were illegally and improperly exacted from respondents, and he says that since the execution of said bond up to and including this date he has paid on account of charges as aforesaid to said company the sum of $160.31.

Respondent further says that on or about the — day of ——, between the said 8 day of May and the 3rd day of August last past, the said receiver brought over said railroad, consigned to this respondent, a certain lot of live stock, consisting of thirteen sheep and nine fat hogs, which he refused to deliver to this respondent, but against his consent delivered the same to the said stock-yards company, notwithstanding this respondent was ready, willing, and able and offered to pay the transportation charges thereon, and said stock-yards company refused to deliver the same to this respondent without the payment of lottage charges thereon; and respondent, refusing to pay said charges, the said stock-yards company sold said stock, and the said company and said receiver refuse to pay this respondent therefor, and he says the same was of the value of $75.00.

Wherefore respondent prays that the said receiver and said stock-yards company may be required to refund said lotage charges

115 improperly and illegally exacted from him, and to pay to him the value of said stock sold as aforesaid by said stock-yards company, and that a true account thereof may be stated to the

court; he prays that the matter be referred to a commissioner to take proof thereof and report the same, with a statement of the account, to the court, and he prays for all proper relief.

O'HARA AND BRYAN,
*For Respondent.*

Charles W. Keith says he believes the statements of the foregoing answer are true.

C. W. KEITH.

Sworn to before me by Chas. W. Keith this 1st October, 1886.

JOS. C. FINNELL,
*Clerk U. S. Cir. Ct.,*
By CHAS. Y. GRAY, *D. C.*

116 And on a day following, to wit, on the 15th day of October, 1886, came C. W. Keith & filed certain depositions herein; which said depositions are in words & figures as follows, viz:

*Notice No.* 1.

United States Circuit Court, District of Kentucky.

GEO. T. BLISS, &c., &c., Complainants,
*against*
THE KY. CENT. R. R. Co., Defendants.

The complainants & H. E. Huntington, receiver, and The Covington Stock-Yards Company are hereby notified that Chas. W. Keith will take depositions at the office of the clerk of said court, in the Government building in Covington, on Thursday, the 7th day of October inst., between 9 o'clock a. m. & 6 o'clock p. m., to be read as evidence on his behalf on the trial of the issue arising upon the intervening petition of the said Covington stock-yards and the answer of said Keith thereto. He will take his own and the deposition of E. W. Wilson & others and continue from day to day until completed.

Oct. 5th, 1886.

O'HARA & BRYAN,
*For Keith.*

Upon which notice the following endorsement appeared:

Executed the within notice Oct. 5th, 1886, on H. E. Huntington, receiver of the Kentucky Central Railroad Company, by delivering to him a true copy hereof, and executed on same day on Covington Stock-Yards Company by delivering a true copy hereof to Harvey Myers, of the firm of Hallam & Myers, attorneys for said company, the foregoing services being made at Covington, Kenton Co.,
117 Ky.; also executed on Geo. T. Bliss & Isaac E. Gates, Oct. 5th, 1886, by delivering a true copy hereof to W. M. Ramsey, of the firm of Ramsey, Maxwell & Matthews, in the city of Cincinnati, Onio, they being the attorneys of record for said Bliss & Gates.

CHAS. Y. GRAY.

UNITED STATES OF AMERICA, } ss:
*District of Kentucky,* }

This affiant, Chas. Y. Gray, states that he is over the age of sixteen years; that he is not a party to nor in anywise interested in this action, and that the foregoing return subscribed to by him is true.

CHAS. Y. GRAY.

Subscribed & sworn to before me this October 5th, 1886.

JOS. C. FINNELL,
*U. S. Clerk.*

*Notice No. 2.*

United States Circut Court, 6th Circuit, District of Kentucky.

GEO. T. BLISS *et al. vs.* THE KENTUCKY CENT. R. R. Co.

Notice.

To the Covington Stock-Yards Company and H. E. Huntington, receiver of the Kentucky Central Railroad Company:

You will take notice that Chas. W. Keith will, on Thursday, October 7th, 1886, at the office of Jos. C. Finnell, U. S. com'r, in rooms Nos 21 & 22 Government building, in the city of Covington, Kenton Co., Ky., proceed to take the depositions of sundry witnesses to be read as evidence in his behalf on the hearing of the intervening action brought against him in the above-entitled cause by the Covington Stock-Yards Co.' Said taking shall be between the hours of 10 o'clock a. m. and 5 o'clock p. m., and will be continued from day to day (Sunday excepted) until said depositions shall be complete.

118

At which time and place you may be present & cross-examine said witnesses if you shall think fit.

JOSEPH C. FINNELL,
*Com'r C. C. U. S., Ky. Dist.*

On which notice appeared the following endorsement:

Executed the within notice Oct. 4th, A. D. 1886, on H. E. Huntington, receiver of the Kent'y Cent. R. R. Co., by delivering to him a copy hereof at Covington, Ky., and executed same day, at same place, on the Covington Stock-Yards Company by delivering a true copy hereof to W. H. Peter, secretary & superintendent of said company.

CHAS. Y. GRAY.

UNITED STATES OF AMERICA, *District of Kentucky:*

This affiant, Chas. Y. Gray, states that he is over the age of sixteen years; that he is not a party to nor in anywise interested in this action, and that the foregoing return subscribed to by him is true.

CHAS. Y. GRAY.

Subscribed & sworn to in my presence this Oct. 4th, A. D. 1886.

JOSEPH C. FINNELL,
*U. S. Clerk.*

119 Depositions of sundry witnesses taken before me, Joseph C. Finnell, a United States commissioner within and for the State of Kentucky, pursuant to the annexed notice, in an action pending in the United States Court, [in] which C. W. Keith (style of case, Bliss & Gates *vs.* The Kentucky Central Railroad Company) [is] plaintiff and The Covington Stock-Yards Company defendant, James O'Hara being present on behalf of plaintiff.

C. W. KEITH, of lawful age, being by me first duly cautioned & sworn, deposes and says as follows:

Ques. 1. State your name, age, residence, and occupation.

Ans. C. W. Keith; 48 years of age; reside in Covington; business, live-stock broker and dealer in live stock generally, buying & selling on commission, receiving & caring for stock at the Banner stock-yards, at Covington, for myself & others.

Ques. 2. Who is the proprietor of the Banner stock-yards?

Ans. I am the owner of the stock-yards myself, but Mr. Wilson & I are in the live-stock business together and are the proprietors of the Banner stock-yards?

Ques. 3. From what source is the profit derived in the use of your stock-yards and the Covington stock-yards?

Ans. The profits are derived from feeding & selling and weighing over the scales. The selling and weighing will constitute a profit known as lottage.

120 Ques. 4. How long have you been using the Banner stock-yards in the business stated?

Ans. The Banner stock-yards were erected in March, 1880. I used those yards a little better than one year. Then I leased them to the Covington stock-yards for a term of five years, which expired last March. I then took the stock-yards in possession again and have been running them ever since.

Ques. 5. What were you engaged in during the period the Covington Stock-Yards Company had the Banner stock-yards leased from you?

Ans. I was in the commission business, buying and selling on my own account and for others shipping East, principally at the Covington stock-yards.

Ques. 6. What fees or charges were exacted of you, if any, by the Covington Stock-Yards Company for passing live stock through their yards from the cars of the K. C. R. R. to the public street, or for passing such from the street through their yards to the cars of said railroad for shipment?

Ans. There never was any charges exacted from me until the 8th day of May last for either passing stock to or from the railroad through the yards.

Ques. 7. What was the habit of the stock-yards Co. in that regard as to other persons receiving stock or shipping stock by the

121 Ky. Central R R. through these yards?

Ans. There never was any charge, to my knowledge. I have shipped a great deal of stock on my own account and for others. It is a fact that there was no charge. I never knew of any

charge being made to any one. I have known of many persons shipping & receiving stock through said yards, and I never knew of any one being charged for same.

Ques. 8. Since the 8th day of May last what has been the habit of the Covington Stock-Yards Co. in that respect as to yourself and others?

Ans. Since 8th of May last they have charged me lottage on such stock as was designated for my yards, whether it belonged to me or others, coming to my yards. Any other commission man or live-stock dealer, any stock that he sent to my place for sale or for care, lottage was charged upon that stock; but if the stock handled by the same parties was taken to Cincinnati or across the river, and not offered at my place for sale, there was no charge for lottage for passing through the yards, which has always been, and is now, the custom of the Covington stock-yards.

Ques. 9. State whether these lottage charges were paid by you to the Covington stock-yards willingly or not; and, if not, what efforts you made to obtain free delivery to and from the railroad trains
122 of stock consigned to you or shipped by you, to whom you applied for redress, and with what result.

Ans. All that I did pay I paid under protest. I applied to the stock-yards Co., to the receiver of the railroad, and to C. L. Brown, general freight agent of the railroad. I applied to the stock-yards and demanded the free delivery of the stock, and they invariably locked the stock up and refused to deliver same to me unless the lottage charges were paid, and I had to pay the lottage charges to get my stock. I then notified the receiver, H. E. Huntington, that I could not get my stock without paying additional charges, such as lottage, in person, and also written notice; also C. L. Brown in person, and also by written notice. The receiver thereupon said he thought he could make an arrangement to deliver my stock through the stock-yards free of charge, which was done for a period of three or four days. After this period of three or four days he then began the delivery of stock to me at the city depot, the passenger depot, the terminus of the Kentucky Central railroad, which he said could not be continued any longer than some other convenient place could be provided, which would be done in the course of a week or ten days. After some ten or fifteen days had elapsed I applied to him to know whether he had provided such place. He said such
123 place could not be obtained and could not be operated, unless such place could be provided on his live-stock switch, which switch is between 15th & 18th streets, in Covington. He then agreed with me that if I would provide such place upon said live-stock switch, at my own expense, a proper place to load and unload to and from the cars, that he would deliver all stock owned or consigned to me or others that wanted to be discharged or received at that place, and he would do it willingly. This I done within a period of four days, and notified him and his employees that the shutes & platforms for the purpose of receiving and discharging stock agreed upon between him & I was ready for service and at his disposal free of charge, and that I was ready & willing to execute a

court; he prays that the matter be referred to a commissioner to take proof thereof and report the same, with a statement of the account, to the court, and he prays for all proper relief.

O'HARA AND BRYAN,
*For Respondent.*

Charles W. Keith says he believes the statements of the foregoing answer are true.

C. W. KEITH.

Sworn to before me by Chas. W. Keith this 1st October, 1886.

JOS. C. FINNELL,
*Clerk U. S. Cir. Ct.,*
By CHAS. Y. GRAY, *D. C.*

116 And on a day following, to wit, on the 15th day of October, 1886, came C. W. Keith & filed certain depositions herein: which said depositions are in words & figures as follows, viz:

*Notice No.* 1.

United States Circuit Court, District of Kentucky.

GEO. T. BLISS, &c., &c., Complainants,
*against*
THE KY. CENT. R. R. CO., Defendants.

The complainants & H. E. Huntington, receiver, and The Covington Stock-Yards Company are hereby notified that Chas. W. Keith will take depositions at the office of the clerk of said court, in the Government building in Covington, on Thursday, the 7th day of October inst., between 9 o'clock a. m. & 6 o'clock p. m., to be read as evidence on his behalf on the trial of the issue arising upon the intervening petition of the said Covington stock-yards and the answer of said Keith thereto. He will take his own and the deposition of E. W. Wilson & others and continue from day to day until completed.

Oct. 5th, 1886.

O'HARA & BRYAN,
*For Keith.*

Upon which notice the following endorsement appeared:

Executed the within notice Oct. 5th, 1886, on H. E. Huntington, receiver of the Kentucky Central Railroad Company, by delivering to him a true copy hereof, and executed on same day on Covington Stock-Yards Company by delivering a true copy hereof to Harvey Myers, of the firm of Hallam & Myers, attorneys for said company, the foregoing services being made at Covington, Kenton Co.,
117 Ky.; also executed on Geo. T. Bliss & Isaac E. Gates, Oct. 5th, 1886, by delivering a true copy hereof to W. M. Ramsey, of the firm of Ramsey, Maxwell & Matthews, in the city of Cincinnati, Onio, they being the attorneys of record for said Bliss & Gates.

CHAS. Y. GRAY.

UNITED STATES OF AMERICA, } ss:
*District of Kentucky,* }

This affiant, Chas. Y. Gray, states that he is over the age of sixteen years; that he is not a party to nor in anywise interested in this action, and that the foregoing return subscribed to by him is true.

CHAS. Y. GRAY.

Subscribed & sworn to before me this October 5th, 1886.

JOS. C. FINNELL,
*U. S. Clerk.*

*Notice No. 2.*

United States Circuit Court, 6th Circuit, District of Kentucky.

GEO. T. BLISS *et al. vs.* THE KENTUCKY CENT. R. R. Co.

Notice.

To the Covington Stock-Yards Company and H. E. Huntington, receiver of the Kentucky Central Railroad Company:

You will take notice that Chas. W. Keith will, on Thursday, October 7th, 1886, at the office of Jos. C. Finnell, U. S. com'r, in rooms Nos 21 & 22 Government building, in the city of Covington, Kenton Co., Ky., proceed to take the depositions of sundry witnesses to be read as evidence in his behalf on the hearing of the intervening action brought against him in the above-entitled cause by
118 the Covington Stock-Yards Co. Said taking shall be between the hours of 10 o'clock a. m. and 5 o'clock p. m., and will be continued from day to day (Sunday excepted) until said depositions shall be complete.

At which time and place you may be present & cross-examine said witnesses if you shall think fit.

JOSEPH C. FINNELL,
*Com'r C. C. U. S., Ky. Dist.*

On which notice appeared the following endorsement:

Executed the within notice Oct. 4th, A. D. 1886, on H. E. Huntington, receiver of the Kent'y Cent. R. R. Co., by delivering to him a copy hereof at Covington, Ky., and executed same day, at same place, on the Covington Stock-Yards Company by delivering a true copy hereof to W. H. Peter, secretary & superintendent of said company.

CHAS. Y. GRAY.

UNITED STATES OF AMERICA, *District of Kentucky:*

This affiant, Chas. Y. Gray, states that he is over the age of sixteen years; that he is not a party to nor in anywise interested in this action, and that the foregoing return subscribed to by him is true.

CHAS. Y. GRAY.

Subscribed & sworn to in my presence this Oct. 4th, A. D. 1886.

JOSEPH C. FINNELL,
*U. S. Clerk.*

119 Depositions of sundry witnesses taken before me, Joseph C. Finnell, a United States commissioner within and for the State of Kentucky, pursuant to the annexed notice, in an action pending in the United States Court, [in] which C. W. Keith (style of case, Bliss & Gates *vs.* The Kentucky Central Railroad Company) [is] plaintiff and The Covington Stock-Yards Company defendant, James O'Hara being present on behalf of plaintiff.

C. W. KEITH, of lawful age, being by me first duly cautioned & sworn, deposes and says as follows:

Ques. 1. State your name, age, residence, and occupation.

Ans. C. W. Keith; 48 years of age; reside in Covington; business, live-stock broker and dealer in live stock generally, buying & selling on commission, receiving & caring for stock at the Banner stock-yards, at Covington, for myself & others.

Ques. 2. Who is the proprietor of the Banner stock-yards?

Ans. I am the owner of the stock-yards myself, but Mr. Wilson & I are in the live-stock business together and are the proprietors of the Banner stock-yards?

Ques. 3. From what source is the profit derived in the use of your stock-yards and the Covington stock-yards?

Ans. The profits are derived from feeding & selling and weighing over the scales. The selling and weighing will constitute a profit known as lottage.

120 Ques. 4. How long have you been using the Banner stock-yards in the business stated?

Ans. The Banner stock-yards were erected in March, 1880. I used those yards a little better than one year. Then I leased them to the Covington stock-yards for a term of five years, which expired last March. I then took the stock-yards in possession again and have been running them ever since.

Ques. 5. What were you engaged in during the period the Covington Stock-Yards Company had the Banner stock-yards leased from you?

Ans. I was in the commission business, buying and selling on my own account and for others shipping East, principally at the Covington stock-yards.

Ques. 6. What fees or charges were exacted of you, if any, by the Covington Stock-Yards Company for passing live stock through their yards from the cars of the K. C. R. R. to the public street, or for passing such from the street through their yards to the cars of said railroad for shipment?

Ans. There never was any charges exacted from me until the 8th day of May last for either passing stock to or from the railroad through the yards.

Ques. 7. What was the habit of the stock-yards Co. in that regard as to other persons receiving stock or shipping stock by the

121 Ky. Central R R. through these yards?

Ans. There never was any charge, to my knowledge. I have shipped a great deal of stock on my own account and for others. It is a fact that there was no charge. I never knew of any

charge being made to any one. I have known of many persons shipping & receiving stock through said yards, and I never knew of any one being charged for same.

Ques. 8. Since the 8th day of May last what has been the habit of the Covington Stock-Yards Co. in that respect as to yourself and others?

Ans. Since 8th of May last they have charged me lottage on such stock as was designated for my yards, whether it belonged to me or others, coming to my yards. Any other commission man or live-stock dealer, any stock that he sent to my place for sale or for care, lottage was charged upon that stock; but if the stock handled by the same parties was taken to Cincinnati or across the river, and not offered at my place for sale, there was no charge for lottage for passing through the yards, which has always been, and is now, the custom of the Covington stock-yards.

Ques. 9. State whether these lottage charges were paid by you to the Covington stock-yards willingly or not; and, if not, what efforts you made to obtain free delivery to and from the railroad trains
122 of stock consigned to you or shipped by you, to whom you applied for redress, and with what result.

Ans. All that I did pay I paid under protest. I applied to the stock-yards Co., to the receiver of the railroad, and to C. L. Brown, general freight agent of the railroad. I applied to the stock-yards and demanded the free delivery of the stock, and they invariably locked the stock up and refused to deliver same to me unless the lottage charges were paid, and I had to pay the lottage charges to get my stock. I then notified the receiver, H. E. Huntington, that I could not get my stock without paying additional charges, such as lottage, in person, and also written notice; also C. L. Brown in person, and also by written notice. The receiver thereupon said he thought he could make an arrangement to deliver my stock through the stock-yards free of charge, which was done for a period of three or four days. After this period of three or four days he then began the delivery of stock to me at the city depot, the passenger depot, the terminus of the Kentucky Central railroad, which he said could not be continued any longer than some other convenient place could be provided, which would be done in the course of a week or ten days. After some ten or fifteen days had elapsed I applied to him to know whether he had provided such place. He said such
123 place could not be obtained and could not be operated, unless such place could be provided on his live-stock switch, which switch is between 15th & 18th streets, in Covington. He then agreed with me that if I would provide such place upon said live-stock switch, at my own expense, a proper place to load and unload to and from the cars, that he would deliver all stock owned or consigned to me or others that wanted to be discharged or received at that place, and he would do it willingly. This I done within a period of four days, and notified him and his employees that the shutes & platforms for the purpose of receiving and discharging stock agreed upon between him & I was ready for service and at his disposal free of charge, and that I was ready & willing to execute a

sufficient and satisfactory bond for the collection of all freight & charges of any stock that might be discharged at that place. He failed to deliver any stock there, and from that fact the bond was not executed. There was an injunction issued out of the Kenton chancery court, which was in force about the period of ten days. The injunction was dissolved. I then went to the receiver, H. E. Huntington, and asked him what he now proposed to do in regard to the delivery of my stock. He told me that he had no other place
124 suitable for the delivery & reception of stock other than the Covington stock-yards, and that he had decided to deliver all my stock, as well as others, into the Covington stock-yards, and you & the Covington stock-yards can fight it out. I'll have nothing to do with it, which he has done ever since to the present time, and I have been compelled to pay "lottage" on all stock billed to me or in my care, or by any one else any—stock intended for me or my place.

Ques. 10. What reason did the receiver assign at the time for not delivering stock at the platform & chute erected by you, as stated in your last answer?

Ans. He said he was enjoined and refused to deliver it at that place or even at the city depot, and did deliver it into the possession of the Covington stock-yards.

Ques. 11. What arrangements, if any, at any time were made by the receiver, or chute, gangway, or facilities of any kind provided by the receiver for the reception & shipment of live stock, at the general freight depot of said railroad Co., at your instance or request or by your consent?

Ans. There never was any platforms, chutes, or lots provided; there was no suitable place provided either for the delivery or reception of live-stock at the city depot or freight depot. I
125 never made any such request—in fact, I protested against it. I refused to receive any stock there longer than some suitable place could be provided. I only did it to accommodate him.

Ques. 12. State the facts which, in your opinion, render the general freight depot of the railroad Co. an unsuitable place to deliver live stock brought to Covington by said railroad, or to receive such stock for shipment over said road to the company, or to the shipper or receiver.

Ans. The freight depot is impracticable from the fact that [it] is a mile further north than the live-stock switch, which has been the common place of receiving & delivering by the N. C. R. R. for a period of 20 years or more, rendering it impracticable because they have to go through switches off of the main track into the city depot, which experience or attempting to deliver any such live stock has, in many cases, consumed from one to two hours to effect such delivery, whereby rendering it very damaging to live stock from the fact of the detention and time consumed to make such delivery, and when such delivery is effected that it is done between two tracks, upon an open platform used by the railroad for the purpose of loading and unloading heavy dead freight, and when any such live stock is delivered there it has to be unloaded on this platform

& delivered in the open streets, which are all around this
126 depot, which makes it impossible to control such live stock;
there are no stock-pens there and no place for any; therefore it would be impossible to receive stock for shipment at that point or any like point with such accommodations, from the fact that live stock must be confined in well-built closed pens, in order to put them on the cars. The railroad now has an additional construction track, across which you have to drive in order to get to or from this platform.

Ques. 13. What is the comparative convenience between the platforms of the Covington Stock-Yards Co. and the platforms erected by you, as you have stated, for the receipt from or the delivery to said railroad Co. for shipment of live stock to be transported upon said railroad?

Ans. I would say that they are identically the same, being immediately on the live-stock switch of the K. C. R. R.

Ques. 14. In what way, if at all, would the standing of cars upon said switch at your platform, and between that and the junction of the switch with the main track north of your platform, interfere with the passage of trains on the main track?

Ans. In no way whatever.

127 Ques. What was the habit of the Covington Stock-Yards Co. previous to the 8th day of May last in respect to the passage of live stock through their lots shipped by you to Eastern markets over railroads connecting with the Kentucky Central as to charging lottage, and also as to charging lottage on stock consigned to you or for your yards and coming from the L. & N. railroad, and how such stock from the L. & N. road reached the Covington stock-yards, and what has been the practice in respect to such consignments and shipment of such stock since the 8th day of May last?

Ans. Previous to the 8th of May last—in fact, ever since Covington stock-yards were built—there never has been any charge of lottage or of any other nature for stock passing through the yards to or from the railroad from me or any one else that I know of; that has been their practice and custom. Stock coming over the L. & N. R. R. is delivered to the K. C. R. R. at Milldale, and the K. C. R. R. hauls such stock into Covington for one dollar per car and delivers it to the owner or consignee. Since 8th day of May last the Covington stock-yards, with the exception of three or four days already mentioned in my deposition, have charged me lottage on all stock passing through their yards to & from my place to the railroad, no
matter where received from or shipped to. Stock coming
128 over the L. & N. railroad has never been delivered to me except through the Covington stock-yards. The receiver has always refused to deliver stock consigned to me & coming from the L. & N. road, except through the Covington stock-yards.

Ques. 16. What difference or distinction between you and others, if any, has been made by the Covington stock-yards in respect to charges on live stock passing through the yards either way, and how long has that continued?

Ans. The difference between I & others in stock coming from

the railroad in the matter of charges between me & others is five cents a head upon sheep, six cents upon hogs per head, and twenty cents per head upon cattle for the passing out through the yards; that charge is not made to others, unless they are going to the Banner stock-yards. The difference between me & others offering stock for shipment over any of the lines leaving the Covington stock-yards over the K. C. R. R., the L. & N. R. R., or Penn. Central R. R., which road I ship a great deal of stock over—more, perhaps, than any other two shippers or firms—the same charge per head is made to me for any and all stock offered by me for such shipment; such charges are not exacted or required from any one else. The K. C. R. R. or the receiver, H. E. Huntington, do and have refused any stock offered by me for shipment unless I would submit to such charges, but has agreed to ship stock over the C. & O. road
129 East and have it come through the stock-yards without charge to me.

Ques. 17. Look at the plat filed herein on the 15th July and state whether or not it is a correct representation of the relative position of the objects marked thereon and of the distances or measurements thereon marked, and who made it, and whether from actual measurements or not.

Ans. I have looked at the plat; I made it myself from actual measurements; it shows the relative positions of the objects thereon, and the distances are correctly stated.

C. W. KEITH.

Also the deposition of E. W. WILSON, taken at [the] same time & place and to be use- in same behalf:

Ques. 1. State your name, age, residence, and occupation.

Ans. E. W. Wilson; age, 38; reside in Covington, and am a live-stock dealer.

Ques. 2. What business are you engaged in and when & how long have you been so engaged?

Ans. I am a live-stock broker; do business in Covington, and have been engaged in said business 10 or 15 years.

130 Ques. 3. State what you know of the habit or practice of the Covington Stock-Yards Company in regard to charging persons receiving or shipping live stock from or upon the Kentucky Central railroad anterior to the 8th day of May last and since that time.

Ans. Their custom prior to the 8th day of May last has always been to receive stock from all railroads or from the country into their yards, and such stock as that would be actually sold & weighed at the yards they would charge their customary lottage, but any lot or part of lots of stock not sold there would be removed out of their yards without any charges except transportation charges. Since May 8th last the custom has been the same, except such *such* lots as they though- was going to be taken to C. W. Keith's or the Banner stock-yards. Upon such shipments consigned to Keith & Wilson or others patronizing us they would demand charges called "lottage" in addition to transportation charges, which, if not paid by us, the

stock would be locked up until such additional charges were paid, and if not paid said stock would be sold by the Covington Stock-Yards Co., and when transportation charges were offered them and possession of stock demanded of railroad agent he would ask the destination of such stock, and when told "that was the owner's business," then the stock would be locked up until the extra charges were paid.

131 Ques. 4. What knowledge have you and state what efforts have been made by C. W. Keith to obtain from the receiver of the Ky. Central Railroad Co. the delivery of stock owned by or consigned to him & you at the Banner stock-yards free from lottage charges by the Covington Stock-Yards Co., and what was the result of those efforts? If you made application to the receiver or any of his agents in regard to the delivery or shipment of stock or were present at any interview between Keith & the receiver or any of said agents, state what occur-ed between them & Keith and between them & you.

Ans. We first demanded of the live-stock agent at the stock-yards possession of stock consigned to us upon payment of the usual transportation charges, but such consignments being refused us without additional charges, Mr. Keith notified both C. L. Brown, the general freight agent, and H. E. Huntington, the receiver, of the discrimination being practiced against him by the Covington Stock-Yards Co., and that they must not deliver his stock to the Covington Stock-Yards Co. or any one else but himself. Such notice was delivered to them by me in writing. Such notice also required them to deliver his stock to him at a convenient place; they replied they had no other place convenient for loading & unloading stock except the Covington stock-yards, and would build no other place, but

132 would permit Mr. Keith to furnish such place, and they would run all of his stock to it; also, that they would temporarily deliver his stock at the freight depot until a proper place could be found. On several occasions I made application to C. L. Brown & Mr. Huntington, also to the railroad agent at the stock-yards, that we had stock and wished to ship the same East over their road & connecting lines; they replied they had no place to load them, and would have nothing to do with them, saying, The Covington Stock-Yards Co. did all that business. C. L. Brown, in one instance, said, Bring your stock to the city depot and load it there. I replied that he knew it could not be loaded there, there being no facilities there whatever for loading stock aboard the cars—no pens or chutes to prevent them from running away from the cars instead of into *it*. Mr. Keith was enjoined June 4th from receiving any stock from the Ky. Cent. R. R. Co., and, simultaneously with that injunction, the receiver, Mr. Huntington, had Mr. Keith's platform for unloading torn up, and refused to deliver any stock to him only into the Covington stock-yards. After this injunction was dissolved Mr. Keith still demanded of all parties connected with the railroad the delivery of his stock upon payment of transportation charges in a suitable place,

133 but was notified that all stock consigned to him would be landed at the freight depot, and both Mr. Keith & myself re-

fused to receive it there; but they still sent it there, and notified us that it was there, and we could do nothing else but receive said stock or let it stand in the cars on the side track, which would be very injurious to said stock; such delivery continued to be made from time to time till the Covington stock-yards gave bond, and such stock has since been delivered to them.

Ques. 5. Where has the Kentucky Cent. R. R. Co. had its live-stock depot in Covington since you have known it, and how long and whether it has had one or more? If you know the general passenger & freight depot, state whether it has been in general use for the receipt & shipment of live stock, and whether it is suitable for that purpose; and, if not, why not?

Ans. Its live-stock depot has been where it now is ever since the railroad was constructed, and that is the only live-stock depot it ever has had to my knowledge. I do know the general passenger & freight depot, and as to whether it is a suitable place to receive or ship live stock from I refer to & make part of my deposition my affidavit on that subject filed in this case on the 12th day of July, 1886, and which is now a part of the record in said case. Said delivering point at freight depot is situated between the main tracks and
134 side freight tracks, near their junction, and since the filing of said affidavit just referred to another track has been laid across 8th street, and running between said freight depot and the thoroughfare to which stock has to go.

Ques. 6. If you have kept an account of the lottage paid to the Covington Stock-Yards Company by Keith, or by him & you, on live stock passing through said stock-yards to or from the Kentucky Central railroad, intended for Keith or the Banner stock-yards, or for shipment since the 8th day of May last and up to the 3d of August last, and since the last-named date, state them separately during the two periods, itemize the accounts, and distinguish between charges on stock received and stock shipped — file the account.

Ans. I did keep such an account and now file same as part of my deposition, marked "A" & "B"—Exhibit "A" showing amount paid between May 8th and August 3rd, and Exhibit "B," showing amount paid from August 3d to date.

Ques. 7. If there was any stock consigned to Keith or the Banner stock-yards which was not delivered at all, state when that occurred and what became of the stock and what was its value.

135 Ans. There was stock consigned to Keith & Wilson which was not delivered at all. This occurred on June 5th, 1886. Mr. Bryan shipped us 13 sheep and 9 hogs, which the receiver ordered delivered at the Covington stock-yards. They were delivered at the stock-yards about 11 p. m. after standing on the side track since 5 p. m. On the following morning I demanded of the agent said sheep & hogs, and offered him the freight on same due the Ky. Cent. R. R., but he said I could not get them, and I told him I would only pay the usual transportation charges I have not seen said stock since, but believe it was sold by the Covington Stock-Yards Company. Its value at the time of its reception was $75.00 or more.

Ques. 8. If at any time live stock consigned to Keith or the Banner stock-yards has been delivered at the general freight depot of the Ky. Cent. R. R., state whether any such has been kept and cared for by the receiver for any considerable length of time; state all the facts about this matter.

Ans. There has been stock delivered there, but it was always aboard the cars, and in one or two instances remained aboard cars all night, the receiver not having any pens or other place suitable for the reception of stock. No stock was ever unloaded by him except two calves, which were shut up in the freight depot and were very much suffocated when delivered to us next morning, after
136 being confined there all night with closed doors. This occurred about May 22nd, 1886.

Ques. 9. State what has been the habit of the Covington Stock-Yards Co. in respect of charges for lottage on stock received by Keith from off the L. & N. railroad, and on stock shipped to the Eastern markets over the K. C. R. R. and its connections before and after the 8th day of May last, and whether the same or a different practice has at any time prevailed in respect to other persons.

Ans. Previous to May 8th last there we- no charges to any one, except transportation charges, for stock coming from or going to the railroad through the Covington stock-yards, including the stock coming from or going over the L. & N. railroad. Since May 8th last they have charged him lottage for all stock he passed through either way, making him pay said lottage before they would deliver stock to him, and charging him lottage on all stock shipped by him, such stock never having been sold or weighed in said yards. All stock belonging to any other persons and not sold and weighed in said yards has been since said date and is now daily being passed through without any payment of lottage, as has always been the custom and practice. At least one-half of the daily receip-s, or more than one-half, now pass through in that way. By "him" I mean Mr. Keith. The receiver has also
137 at all times since the 8th day of May last positively refused to deliver to Keith consignments of live stock consigned to him, to Covington, or to Banner stock-yards at any place except into the hands of the Covington Stock-Yards Co.—stock coming over his road from off of the L. & N. R. R.; also he has refused to receive stock over his road to be transferred to said L. & N. R. R. and Penn. Central R. R. I mean to say that all consignments of stock to Keith coming over the L. & N. R. R. or other connecting lines of the K. C. R. R. the receiver has positively refused to deliver to Mr. Keith except by & through the Covington Stock-Yards Company.

Adjourned until Saturday, Octo. 9th, 1886, at 10 a. m.

JOSEPH C. FINNELL, *Com'r.*

Met pursuant to adjournment.

JOSEPH C. FINNELL, *Com'r.*

Examination of E. W. WILSON continued:

Ques. 10. Please review your answer to question No. 4 and state what else, if anything, was done by Mr. Keith other than you have stated therein to obtain from the receiver the delivery of the stock consigned to him or to him & you at the Banner stock yards
138 free from lottage charges by the Covington Stock-Yards Co.

Ans. In answer further to question No. 4, I will say that when C. L. Brown and the receiver told Mr. Keith to furnish a place himself — that they would run his stock to it he purchased a lot on the live-stock switch and erected thereon suitable platform for unloading and loading his stock, which platform I refer to as the one having been torn up by the receiver. After the platform was erected the receiver was notified that it was ready for use, but he would not deliver or receive any stock there, but instead had it torn up, as I have already stated, and gave Mr. Keith notice by the workman that tore it up that he must not replace it.

E. W. WILSON.

Redirect examination of C. W. KEITH:

Ques. 1. State what has been the habit of the Covington Stock-Yards Co. in respect of charges for lottage on stock received by you from off the L. & N. R. R. and on stock shipped to the Eastern markets over the Ky. Cent. R. R. and its connections before & since the 8th day of May last, and whether the same or a different practice has at any time prevailed in respect to other persons.

Ans. In regard to live stock coming over the L. & N. R. R.,
139 — has never at any time prior to or since 8th day of May last been delivered to me excepting into the Covington stock-yards, the receiver, H. E. Huntington, refusing to deliver it to me at any other place at all times, and I was compelled at all times to pay lottage on all such stock in order to get possession of it, with the exception of one or two consignments, which consignments were delivered through said yards to me free of charge. In regard to shipping stock over the Ky. Cent. R. R. East, all such stock brought to the Covington stock-yards from my place or from the country, or from across the river, the Union stock-yards in Cincinnati, and offered for shipment by me could not be shipped unless I would submit to lottage charges before I could get it to the railroad for shipment.

C. W. KEITH.

Adjourned until Monday, Oct. 11, 1886.

JOSEPH C. FINNELL,
*U. S. Com'r.*

Met pursuant to adjournment.

JOS. C. FINNELL,
*U. S. Com'r.*

Cross-examination of C. W. KEITH by T. F. HALLAM, attorney for the Covington Stock-Yards Company:

140 Ques. 1. Is it not the fact that when you say you are the owner of the Banner stock-yards you mean only that you are

owner of the real estate, and is it not the fact that Mr. Wilson is equally interested with you in the operation of the Banner stock-yards and its profits? If any other person is interested say who.

Ans. I don't know what you would infer; I own the real estate and the buildings on it; Mr. Wilson don't own any interest in the real estate or buildings. Mr. Wilson is equally interested with me in the commission business and the profits of our business; no one else at all.

Ques. 2. Why did you prosecute before Hon. Jno. W. Barr, at Louisville, a proceeding against the receiver in this case, in your own name alone, without naming Mr. Wilson, and why did you introduce his affidavit therein as the affidavit of a disinterested wit-
141 ness?

Ans. I didn't introduce Mr. Wilson's affidavit as a disinterested witness. I have always stated he was not a partner in owning the property, but was a partner with me and interested in the commission business. If I was ever called on to make that statement I made it as above—that he was interested with me in the commission business; I only asked Jno. W. Barr to carry out the order of Judge Jackson made prior to that; that was all I asked Jno. W. Barr to do.

Ques. 3. Why have you never heretofore disclosed that Mr. Wilson was a party interested in like manner with yourself in the event of this controversy?

Ans. I never have kept anything secret about it, and say now that Mr. Wilson is no party, and is not interested in anything except the profits of the business.

Ques. 4. Do you know from Mr. Wilson why he filed his affidavit without disclosing that he was interested in the profits, or why you failed to disclose that fact?

Ans. I don't think I have failed to disclose that fact. If I ever was asked the question if Mr. Wilson was interested and how, I had no hesitancy in making it known. I don't know why he should have failed, if he was ever asked that question.

Ques. 5. Don't you know perfectly well that your complaint was made and has been and still is prosecuted by you without joining your partner, E. W. Wilson, with you? And don't you know equally well that an affidavit from him was filed by you as
142 the affidavit of a disinterested person, with no disclosure on your part or his that he was your partner? And in preparing your complaint and his affidavit the other side was not represented, and there was no chance of asking him whether he was interested?.

Ans. I don't connect Mr. Wilson with me in this matter. I do know such to be the fact—at least so I intended it—viz., prosecuting the complaint in my own name. I have no recollection of such affidavit being filed, and if his name was mentioned in connection with it, it was in the profits & management of the commission business. I don't know what the affidavit contains at this time. I don't remember whether the other side were present when my petition or Wilson's affidavit were prepared.

Ques. 6. Look at the affidavit of E. W. Wilson, filed July 12th, 1886, and say once more under your oath whether you do not know that that affidavit was written by your own counsel, in the entire absence of any counsel for the other side?

Ans. Have looked at affidavit; it seems to be in the handwriting of Judge O'Hara, my attorney in this case; never having read
143 it, I don't know what it contains and cannot say that I was present when it was written. I can't say whether any of the other side were present or not.

Ques. 7. Did you not hear that affidavit read before Judge Barr by Judge O'Hara at Louisville?

Ans. I would like to have Mr. Hallam define the time he means. There was twice that I was not present—two sittings of Judge Barr, I mean.

Ques. 8. Did you ever hear that affidavit read before Judge Barr?

Ans. I don't remember that I ever did. If it was read when this case first went before Judge Barr, in all probability I heard it read. At any rate, I was present, but don't remember now that it was read.

Ques. 9. Please stop evasion and say whether it is not the fact, so far as you know or are informed or believe, that every pleading and paper in your behalf, including affidavits by Wilson or any other person in your behalf, was in fact prepared and sworn to in the absence of counsel on the other side.

Ans. Well, sir, when you come to talking about evasion, I am not trying to evade anything. I have not made any statements
144 that are not true. I can't remember whether or not the other side was present or not at all times: I can't make that statement because I don't remember.

Ques. 10. Do you remember any occasion when counsel for the other side was present, when you and your counsel were getting up your complaints against the receiver?

Ans. I don't remember whether they were present at all times, nor neither do I remembe- any particular special instance. I remember that there were conferences between the two attorneys, Mr. Hallam and Judge O'Hara. As to the nature of that conf-rence, with one exception, I don't know what it was. That conference or agreement seemed to be among themselves—whether it was to go to court or something else, I don't know — it was. I don't remember whether Mr. Hallam was ever present or not when complaints or affidavits were being gotten up on my behalf.

Ques. 11. Don't you know that Mr. Hallam never was present on such occasions?

Ans. I don't know anything of the kind.

Ques. 12. Do you believe he was ever present on such an occasion when you were there?

145 Ans. No, I can't recollect whether Mr. Hallam was ever there or not. There's no reason of mine or cause of mine why he wasn't. So far as my knowledge goes, he was apprised of everything that was going on at the proper time. The court so instructed my attorney to compare all affidavits that was intended

for the case, and this was done, so far as my knowledge serves me now.

Ques. 13. Do you mean that you seriously think that your failure to mention your partnership with Mr. Wilson and his failure to mention his partnership with you may have been attributable to the fact that counsel on the other side, being present, failed to ask you *are* Wilson about it, although present when the papers were prepared for you & Wilson?

Ans. I can't answer what the failing of my counsel was. I have never tried to disclose the position of Wilson. I mean I have never tried to keep anything back. I think I have always stated the position heretofore that Mr. Wilson has and does occupy. I know that Mr. Hallam's or some one's else presence was not the cause of Wilson's name not appearing.

Ques. 14. Please explain what the word "lottage" is derived from and how its meaning was established.

146 Ans. If he refers to Webster's Dictionary I refer him to that. If he refers to the stock-yards as to how "lottage" is derived I can give that. Lottage, in that sense, means so much per head on the different kinds of live stock sold or weighed by any one in such stock-yards, and such lottage is not -or ever has been collected from any one, unless stocks were sold in the yards or weighed over the scales of the stock-yards Co., with the exception of myself, since the 8th day of May last.

Ques. 15. Then, if stock should be allowed the use of a "lot" in a stock-yards, no matter for how long, you understand, then, no charges could be made, provided there was no sale or weighing?

Ans. That is the custom of the Covington stock-yards, and has always been.

Ques. 16. Is it true that you are willing to furnish free of cost facilities for loading and unloading stock at your Banner stock yards, to be driven through your yards to a rival stock-yards adjoining, and to be returned through your yards without pay for reshipment?

Ans. Yes, sir; I have so stated that on a former occasion to the receiver, that I would receive all stock billed to me, to my

147 care, and unload it at chutes & platforms at the place provided by me at his suggestion, or that I would load any stock offered by me or others for shipment by me at the same place free of charge, and I would give bond, if necessary or if he required it, for the collection and payment of any such charges as may accrue upon any such deliveries or shipments.

Ques. 17. Who furnishes the men for loading and unloading at a stock-yards, and who pays for the chutes and other facilities?

Ans. I would have to furnish them if I loaded and unloaded at my expense. The railroad furnishes a place to load and unload stock at a stock-yards.

Ques. 18. Do you mean to say that the K. C. R. R. Co. furnished or built or paid for chutes of the Covington Stock-Yards Co. for loading and unloading stock at those yards; if not, who did?

Ans. The same style of chutes & platforms are there now used

that were there 20 years ago. They were established, kept up, maintained, and used by the K. C. R. R. while loading & unloading stock. They were there 20 years ago, to my knowledge, and were used for that purpose before there was any stock-yards there, free of charge to any one. The Covington Stock-Yards Co. has no chutes. They belong to the railroad Co. The Covington stock-yards are adjacent to the chutes & platforms of the K. C. R. R.

148 Ques. 19. Do you mean now to say that the men who handle stock at the chutes at the Covington stock-yards are employees of the K. C. R. R. Co.?

Ans. Well, sir, Chas. L. Brown, gen'l freight agent K. C. R. R., & Mr. Huntington, the receiver, said to me that any stock I wished to ship over their road that they would take it and put it through the yards into their cars without any charge or expense to me. So I would infer from this that they are. They demand skilled men in that profession, to be kept there by their agents for that purpose.

Ques. 20. Were you not for 4 or 5 years a member of the Covington Stock-Yards Co., and do you no- know or believe that all men engaged at the chutes are employed and paid by the stock-yards Co.?

Ans. I was a stockholder in the Covington Stock-Yards Co. ever since it was established. I have nothing to do with the directory; never have had; don't know how men are paid. Mr. Peters, I believe, is the man. He is superintendent of the stock-yards and also agent of the K. C. R. R.

Ques. 21. Is it not the fact that Mr. Peter is only what you call agent of the R. R. Co. by virtue of his position as superintendent of the stock-yards, and that whoever should be such superintendent would become such agent because of being superintendent?

149 Ans. No, sir; I don't know that to be the case. They had an agent there once when there was no yards; they ma-ntained an agent there for that purpose. The way that Mr. Peter appears—one reason why he appears as agent of the K. C. R. R.—is that he is superintendent of the Covington stock-yards. The K. C. R. R. pays to the Covington stock-yards sixty cents per car for loading and unloading each car-load of live stock.

Ques. 22. Do you believe the R. R. Co. provides or maintains the chutes and other facilities for loading and unloading?

Ans. I do.

Ques. 23. Then why did you propose to provide similar facilities for your own stock-yards at your own expense, instead of requiring the R. R. Co. to do it?

Ans. Because I could not get through the Covington stock-yards without paying lottage, and the receiver told me to do it—that is, to prepare a place and he would deliver stock without that charge, and to avoid this trouble and litigation.

Ques. 24. Is it not the fact that there was no litigation pending when you proposed to build your own chutes, &c., and that there was no suggestion that the receiver or railroad company

150 should furnish same for you?

Ans. There was no litigation pending when I began building the chutes and platforms. There was a suggestion that I should

build, and I did build. There was no suggestion that the railroad company or receiver should build. The receiver said he did not think he was empowered to build.

Ques. 25. You have said in answer 7 in chief, that you never knew of any charge being made to any one for merely moving stock through the Covington stock-yards. Please say whether you have ever before known of any one since November 19, 1881 (the date of the contract between the R. R. Co. and the stock-yards Co.), demanding free transit for live stock through the Covington stock-yards to any other stock-yards Co. in Covington?

Ans. Yes, sir.

Ques. 26. Who ever demanded free transit through the Covington stock-yards to any stock-yards in Covington?

Ans. Richard Reese, George R. Martin, Frank Parks, John Kennedy.

Ques. 27. When were those demands made?

151 Ans. I can't remember just the date; it was done since the 8th day of May and at all other times. The question, so far as I know, was never raised previous *previous* to 8th day of May last.

Ques. 28. Is it not a fact that the 8th day of May last was the day you undertook to start your yards?

Ans. It is not the fact in any particular.

Ques. 29. When did you start them?

Ans. They were open about the first day of June, 1880.

Ques. 30. Is it not the fact that you then run them only till you leased them to the Covington Stock-Yards Co.?

Ans. No, sir; that is not the fact. I did not understand the question. I did run them about a year; then leased them to the Covington Stock-Yards Company for a term of five (5) years—which lease expired first day of March last.

Ques. 31. Now, once more: Isn't it a fact that you started your stock-yards over again on May 8th, 1886?

Ans. No, sir; I started them March 1st, 1886.

152 Ques. 32. Give a statement from your books of what business you did between then and May 8th.

Ans. I have not got my books present, and I did not keep what was called a regular set of books. I done a commission business. I have books, and will produce statement and file it as part of my deposition.

Adjourned until Tuesday, October 12th, at 9 a. m.

JOS. C. FINNELL, *Com'r.*

Met pursuant to adjournment.

JOS. C. FINNELL, *Com'r.*

Continuation of cross-examination by T. F. HALLAM, attorney for Covington stock-yards:

Ques. 33. In the book now exhibited, purporting to be the business of Keith & Wilson, when were the entries made, beginning on page 106, and purporting to begin March 17, 1886?

Ans. They were made at the time they show there on the books.

Ques. 34. Have any pencil or other marks been made on them since?

Ans. Not to my knowledge.

Ques. 35. How does the first entry happen to be part ink and part pencil?

153 Ans. I don't know anything about it.

Ques. 36. Why are some of them marked "lottage paid" and others not so marked?

Ans. Well, that's when a man weighs a lot of stock—a calf or a cow—he generally pays the lottage. Well, when his account runs on he don't pay it sometimes—I mean don't pay it at the time it's weighed.

Ques. 37. Was lottage charged by you on all the items in this book?

Ans. Yes, sir; all stock that was weighed over my scales or sold there.

Ques. 38. Was lottage charged by you on all the items comprising 66 pages after page 117, and also charged by the Covington Stock-Yards Co. on the same?

Ans. There are a good many items in that book of stock that came to my yards that don't come through the Covington stock-yards.

Ques. 39. What proportion of the items in these 66 pages came through the Covington stock-yards?

Ans. I have no way of telling that from this book. I don't
154 know what proportion there would be of it. We have an account of the stock coming through the Covington stock-yards, which shows how much stock and what kinds of stock lottage was charged on.

Ques. 40. Can you say whether it comes near $\frac{3}{4}$ or $\frac{1}{2}$ or $\frac{1}{4}$?

A. Without making any examination as to comparisons, I would think at least one-half.

Ques. 41. Now, say whether both your yards and the Covington stock-yards charged lottage on such as did come through the latter yards after May 8th.

Ans. The Covington stock-yards charged me lottage on all stock that came through their yards after the 8th day of May, with a few exceptions, as already stated. I charged lottage on all such stock as was sold and weighed at my place. Parts of the same stock that was not sold there went to the Union stock-yards, in Cincinnati, and on such stock no lottage was charged by me.

Ques. 42. Was there any other on which you did not charge lottage—that is, any other than what passed through to the Union stock-yards?

Ans. There may have been some stock over which I had
155 no control; there was some such stock on which I did not charge lottage.

Ques. 43. Do you not know that the Covington Stock-Yards Co. never knowingly charged for any stock merely passing through Covington?

Ans. I don't think they ever did. I think they have always per-

mitted all stock to pass through free, going to the Union stock-yards, or across the river, or down in the country, unless designated for me or my place—in fact, they have always asked the question, since May 8th, last, "Where it was going?" and if going to my place lottage would be charged.

Ques. 44. In your answer 9 in chief you say that you have been compelled to pay lottage to the present time on all stock billed to you or in your care. Is it not the fact that there was a time when you did not pay lottage, but received and shipped your stock at the general freight depot at Covington?

Ans. Yes, sir; there was such a time—that is, I received stock there and paid no lottage on it. I never shipped any from there.

Ques. 45. Is it not the fact that arrangements at that depot were made by the receiver to receive and ship your stock at your own request, on or about May 20th, and that that arrangement continued until after July 23?

156 Ans. No, sir; I did not request him at all. He didn't make any arrangements with me; he simply delivered some stock to me there; never shipped any for me from there.

Ques. 46. Was not a chute constructed there then for that purpose?

Ans. No, sir; not to my knowledge.

Ques. 47. Look at the letter from the receiver to E. Randolph, superintendent of roadway, dated May 20th (now shown you), and say whether it is not a fact that a chute or gangway with railings was not then constructed to connect the car floors with the platform you speak of.

Ans. I have looked at the letter; I never saw anything except a little "slatted rack" intended for sidings, and it was never used in unloading any stock that I unloaded on the platform; it was not necessary and would not facilitate the unloading of stock in any way.

Ques. 48. But is it not the fact that you did see that thing which you call a "little slatted rack," and that you knew it to have been constructed about May 20th expressly for your stock?

157 Ans. I saw that "slatted rack," but did not know that was what it was for. No man could tell what it was to be used for, never being in position in any way apparently for that purpose.

Ques. 49. How did you happen to see or observe it at all?

Ans. Some one of the employees there suggested that there was a "centraption" of that kind there and pointed it out to me, but it never was used by me.

Ques. 50. Was it not on or about May 20th that that "centraption" was pointed out to you?

Ans. I don't remember as to dates, but suppose it was about that time.

Ques. 51. Had you not just previously directed that your stock should be delivered at depot instead of Covington stock-yards?

Ans. No, sir. I never demanded my stock delivered at the city depot.

Ques. 52. How, then, did it happen that they began to deliver to you there?

Ans. I notified the receiver not to deliver my stock into the possession of the Covington Stock-Yards Company. After such notice he delivered part of my consignments to the city depot, and I was compelled by him to receive it there.

158 Ques. 53. Look at the affidavit of Charles L. Brown, filed herein July 15, and read on one of your motions herein, and look at the motion from you filed with that affidavit, purporting to be a notice of May 14, 1886, to the receiver to deliver no more of your stock to the Covington stock-yards and make the same a part of your deposition, and say whether you did not cause that notice to be served, and whether it was not thereupon agreed that your stock should be delivered at the general depot; also look at a blank bond filed July 15th, and make same a part of your deposition, and say whether same was presented at your place of business for signature, and whether you had not previously promised the receiver that you would execute a bond to pay freight charges in order to obviate the trouble of being present, or having some one present for you, at all times to pay freight charges when your stock should arrive.

Ans. I have looked at the affidavit and notice referred to, and now refer to it and make it a part of this my deposition. I did cause that notice to be served. There was such a bond talked of, but I never saw it. About the time such a bond would have been executed the injunction of the Covington stock-yards, growing out of a proceeding in the Kenton chancery court, broke it up. The terms of the bond now shown me was never presented to me,

159 but a bond to secure the payment of freight charges was talked about.

Ques. 54. Except during the short time of the pendency of that injunction suit, was not your stock general- delivered at the freight depot until the consent order of July 30th was made, and since then you have received and shipped stock through the Covington stock-yards pursuant to that order?

Ans. Only a part of the consignments over the K. C. R. R. were delivered at the city depot after May 8th, until the injunction, about June 1st. Since that time all my stock has been delivered at the Covington stock-yards, the receiver stating to me after injunction was dis-olved that he had decided to deliver all of my stock into the possession of the Covington stock-yards and let me and them fight it out.

Ques. 55. Look at the notice filed July 15 with the affidavit of W. P. Walker, Jr., purporting to be a note from you of date June 26th, requiring the care and keeping of some of your stock by the railroad employees over night, and say whether you wrote and sent that note, and whether your said stock was so cared for over night and delivered to you at the general freight depot in the morning.

Ans. I wrote that note and sent it; it is in regard to a cow

160 and calf. The cow and calf referred to in said note were kept in the cars from 5 o'clock p. m. of same date as note

until 7 a. m. the following morning, and delivered to me out of the car in which they had remained all night.

C. W. KEITH.

Cross-examination of E. W. WILSON by T. F. HALLAM, attorney for Covington Stock-Yards Company:

Ques. 1. Are you not and have you not been throughout all these proceedings a part-er of C. W. Keith in his stock-yards business?

Ans. I am and have so been, but have no connection whatever with the suit of C. W. Keith against the receiver, and will not have any suit. I have no interest in the real estate of the Banner stock-yards; have not spent one dollar there in their construction, nor for the lot upon which his platform is constructed. I have no pecuniary interest in the termination of this suit except the interest in lottage already collected. The notice to Keith on May 8th was addressed to C. W. Keith, not me. The injunction in the State court on June 4 was against C. W. Keith and not me. I do not intend to be in the suit in any way.

E. W. WILSON.

Also the deposition of J. R. LEDYARD, taken at same time and place and to be used in same behalf:

161 Question 1. State your name, age, residence, and occupation.

Ans. J. R. Ledyard; age, 44 years; reside in Covington, and am at present a tobacco manufacturer.

Ques. 2. Were you ever connected with the business of the K. C. R. R. Co; if so, when, for what period, and in what capacity?

Ans. I was, from September, 1861, for about 19 years in the positions of master mechanic and superintendent.

Ques. 3. While you were so connected with said R. R. Co., if they had a live-stock depot for the reception and delivery of live stock for general commercial trade, where was it situated and who constructed it, if you know, and who maintained it?

Ans. The road had a platform for unloading stock on the siding south of 14th street, which platform was put up and maintained by the railroad up to about six years ago, or up to the time the present stock company bought out Ashbrook, when they remodelled it, and I think have maintained it since. This same platform was used for both receiving stock for shipment and discharging stock.

162 Ques. 3. About what time were stock lots and yards constructed adjacent to that platform, and by whom?

Ans. The former stock-pens had been down by the present freight depot, but in 1863 or 1864, being declared a nuisance, Mr. Ashbrook, the owner of those pens, removed them to the present location of the Covington stock-yards.

Ques. 5. How near to the general freight and passenger depot were the original stock-yards of Ashbrook?

Ans. Not over 300 feet, immediately in the rear of the freight depot.

Ques. 6. State whether the R. R. Co. had chutes or platforms at the freight depot for receiving or discharging such live stock while you were connected with the road and while the stock-pens of Ashbrook were maintained, as you have stated, near that depot?

Ans. There were no chutes at the freight depot—on the platform of the depot—at that time.

Ques. 7. Did the R. R. Co. at any time have platform and chutes at the general freight depot for receiving and discharging live stock for general commercial trade; if so, when?

Ans. No, sir; at no time.

163 Ques. 8. Had the R. R. Co. any stock-pens adjacent to that general freight depot for the receiving or keeping such live stock transported or to be transported over its road?

Ans. None that I know of.

Ques. 9. Before the removal of Ashbrook's pens from their location near the freight depot, state whether such live stock brought to Covington by the K. C. R. R. were cared for and kept at those pens. State how they were transported from the platform and chutes of the company to Ashbrook's pens—the platform and chutes of the company south of 14th street.

Ans. It was driven there, the same as stock that went to Cincinnati, through the streets.

Cross-examination by T. F. HALLAM, attorney for Covington Stock-Yards Company:

Ques. 1. State whether, in your opinion as a railroad man, the loading and unloading of stock at Keith's proposed chute, as shown on his plat which is now shown you, would or not interfere with the handling of trains for loading and unloading at the Covington stock-yards.

Ans. That would depend altogether upon the location of the gates. The question cannot be answered unless location of the gates is known.

164 Ques. 2. Would it not be necessary, in order to load and unload at both places simultaneously, to so arrange the train at each station where stock should be shipped to Keith as his cars should be placed in a particular part of the train?

Ans. Not necessarily; that isn't a railroad question. If you want a direct answer to that question it is that it would be necessary to so arrange them up the road.

Ques. 3. Is it or not the custom, in taking on cars along the line of a railroad, to break up the train, so as to place them in a particular part of the train for the special convenience of one shipper?

Ans. Yes; so as to get all of his shipments together.

Ques. 4. Suppose instructions were given to all the agents of the K. C. R. R. and all its connections to so arrange trains at each station for Mr. Keith's convenience, would or not the standing of his cars at his proposed chute for loading and unloading interfere with the necessary moving of cars, loading and unloading, at the Covington stock-yards for the general public?

Ans. As a presumed case, it would if Mr. Keith had a lim-

165 ited platform. The inconvenience would only be caused by the delay in unloading at a short platform, and the delay to other shippers would depend on the length of the train and the number of other cars to be unloaded.

Ques. 5. Would you or not, as a railroad man, regard it as a good policy to establish and try to operate, in the same switch, within 62 feet of a general platform, another platform for the reception and delivery of freight to one person?

Ans. That is a question that would depend altogether upon the amount of traffic going to the two platforms. While good management would determine on concentration, the platform for the one man might demand the best share of the trade.

Ques. 6. Is it or not probable that there would be interference in the operation of the two if both had trade daily?

Ans. Possibly there might be; necessarily not be.

Ques. 7. Describe how these two stock chutes could be operated simultaneously without interference and without unusual provision of the railroad to avoid it.

Ans. The platforms or gates at both yards could be ar-
166 ranged at such distances to correspond with the distance between car doors and from one car to the other so as to unload as on one continuous platform and yard; then, by having all the cars belonging to one yard placed together so as to be unloaded continuously and at the same time the cars at the other yard were being unloaded, no necessary delay would ensue, but, to do this effectually, care should be exercised in taking cars at stations along the line so that all the cars consigned to the one yard should be together.

Ques. 8. Then your plan depends somewhat on the co-operation of the two companies controlling the two platforms, in promptness of handling, and in regulation of distances?

Ans. Certainly; yes, sir.

Ques. 9. Without such co-operation, would or not inconvenience be likely to result to the railroad company?

Ans. Yes, sir.

Redirect examination by JAS. O'HARA, attorney for C. W. Keith:

Ques. 1. Would you not consider it proper railroad management for the railroad company to control and direct the location of all platforms used by it for the receipt and delivery of live
167 stock, and would it not be repugnant to good railroad management to submit the location of such platforms to others?

Ans. Good management always locates its platforms and depots where its business can be transacted with promptness and convenience for its patrons.

Ques. 2. State whether or not it would be more convenient to the railroad company and the shipper and consignee to receive stock for shipment over the road and to deliver stock at Keith's platform, as indicated on the plat referred to, than at the general freight and passenger depot.

Ans. It would certainly be more convenient to put it out at the cattle chute than at the freight and passenger depot.

J. R. LEDYARD.

It is agreed that all the affidavits now on file in this case and W. J. Lippincot's affidavit, to be taken on behalf of the Covington stock-yards, may be read as evidence on the trial of the questions now pending.

HALLAM & MEYERS,
*For Covington Stock-Yards Co.*
O'HARA & BRYAN,
*For C. W. Keith.*

168 STATE OF KENTUCKY, } *ss*:
*Kenton County,* }

I, Joseph C. Finnell, a commissioner of the circuit court of the United States, district of Kentucky, in and for the county and State above named, duly commissioned and qualified, do hereby certify that the above-named C. W. Keith, E. W. Wilson, and J. R. Ledyard were by me first severally sworn to testify the truth, the whole truth, and nothing but the truth, and that the depositions by them subscribed, as above set forth, were reduced to writing by me in the presence of the witnesses and were read to them and were subscribed by said witnesses, respectively, in my presence, and were continued from day to day as above set forth; that said depositions were taken at the time and place specified in the notice hereto attached, and that I am not counsel, attorney, or relative of either party or otherwise interested in the event of this suit.

In testimony whereof I have hereunto set my hand and official seal this 15th day of October, A. D. 1886.

[SEAL.] JOSEPH C. FINNELL,
*Com'r U. S. C. C., Ky. Dist.*

The following is a copy of "Exhibit A," filed with the deposition of E. W. Wilson, and is endorsed "Lottage paid by C. W. Keith to Covington stock-yards, from May 8th to August 3rd, 1886, $253.66."

169 EXHIBIT A.

*Amount of Lottage Paid Covington Stock-Yards Company by C. W. Keith from May 8th to Aug. 3, 1886.*

| | | | |
|---|---|---|---|
| May | 9. | R. Reese, 6 cattle & 12 calves & 35 sheep | 4 45 |
| | 9. | G. W. Mitchell, 76 hogs | 4 56 |
| | 10. | H. H. Hall, 1 calf | 10 |
| | 12. | W. H. Craig, 102 sheep | 5 10 |
| | 12. | " " 10 cattle, 1 calf, & 32 hogs | 4 42 |
| | 13. | R. Reese, 59 hogs | 3 54 |
| | 14. | Drennan & Wilson, 67 hogs | 4 02 |
| | 15. | B. F. Arnold, 45 hogs, 15 sheep, & 2 calves | 3 65 |
| | 19. | A. Sevier, 71 hogs | 4 26 |

| | | | |
|---|---|---|---|
| May | 20. | Drennan & Wilson, 41 hogs, 28 sheep | 3 86 |
| | 20. | " " 65 " | 3 90 |
| | 23. | R. Reese, 40 hogs, 2 cattle, & 2 calves | 3 10 |
| | 30. | Kennedy & Hume, 21 cattle | 5 25 |
| June | 6. | Drennan & Wilson, 20 " | 5 00 |
| | 9. | Talbot & Breeding, 59 hogs | 3 54 |
| | 9. | " " 67 " | 4 02 |
| | 9. | Drennan & Wilson, 70 " | 4 20 |
| | 11. | " " 21 cattle | 5 25 |
| | 15. | A. J. Arnold, 51 hogs | 3 06 |
| | 16. | J. S. Chilton, 62 " | 3 72 |
| | 16. | Talbott & Breeding, 65 hogs | 3 90 |
| | 16. | Kennedy & Hume, 27 " & 9 cattle | 3 87 |
| | 17. | Drennan & Wilson, 17 " & 98 sheep | 5 92 |
| | 17. | " " 72 " | 4 32 |
| | 17. | Martin & Scobee, 73 " | 4 38 |
| | 20. | Lewis Lebus, 55 " | 3 30 |
| | 24. | Martin and Scobee, 119 " | 7 14 |
| | 25. | R. M. & L. Smith, 113 sheep | 5 65 |
| | 26. | Kennedy & Hume, 208 sheep | 10 40 |
| 170 | 30. | R. M. & L. Smith, 113 hogs | 5 65 |
| | 30. | Kennedy & Hume, 14 cattle | 3 50 |
| July | 2. | R. M. & L. Smith, 61 hogs | 3 66 |
| | 4. | Kennedy & Hume, 220 lambs | 11 00 |
| | 6. | " " 217 " | 10 85 |
| | 6. | Talbot & Breeding, 54 hogs | 3 24 |
| | 7. | R. M. & L. Smith, 25 cattle | 6 25 |
| | 8. | R. Reese, 114 hogs | 6 84 |
| | 9. | J. S. Chilton, 54 " | 3 24 |
| | 11. | " 18 cattle | 4 50 |
| | 11. | Kennedy & Hume, 30 hogs & 7 cattle | 3 55 |
| | 14. | " " 117 sheep | 5 85 |
| | 14. | " " 120 sheep | 6 00 |
| | 14. | John Kirk, 58 hogs | 3 48 |
| | 18. | L. Patterson, 21 cattle | 5 25 |
| | 21. | Martin & Scobee, 62 hogs | 3 72 |
| | 21. | " " 30 hogs | 1 80 |
| | 27. | Kennedy & Hume, 107 sheep | 5 35 |
| | 27. | " " 100 " | 5 00 |
| | 31. | R. M. & L. Smith, 141 " | 7 05 |

*Stock Shipped East on which Lottage was Charged.*

| | | | |
|---|---|---|---|
| May | 19. | 120 hogs | 7 20 |
| July | 8. | 92 sheep | 4 60 |
| | 15. | 21 sheep | 1 05 |
| | 22. | 131 sheep | 6 55 |
| | 26. | 8 sheep | 40 |

The following is a copy of "Exhibit B" filed with the deposition of E. W. Wilson; "endorsed" lottage paid by C. W. Keith to Cov-

ington Stock-Yards Company from Aug. 3rd to Oct. 1st, 1886, $161.30:

171 "EXHIBIT B."

*Amount of Lottage Paid by C. W. Keith to the Covington Stock-Yards Co. After the Execution of the Bond by the Stock-Yards Required by the Court.*

| | | | |
|---|---|---|---|
| Aug. | 5. | James Lansdown, 115 sheep | 5 75 |
| | 5. | " " 118 " | 5 90 |
| | 5. | H. H. Hall, 1 calf | 10 |
| | 7. | Kennedy & Hume, 229 sheep | 11 45 |
| | 11. | R. M. & L. Smith, 25 cattle | 6 25 |
| | 11. | " " 105 sheep | 5 25 |
| | 11. | Drennan & Wilson, 55 hogs | 3 30 |
| | 14. | Talbot & Breeding, 39 hogs & 33 sheep | 4 49 |
| | 15. | John C. Braun, 8 hogs & 90 sheep | 4 98 |
| | 18. | Kennedy & Hume, 6 hogs & 15 cattle | 4 11 |
| | 29. | John Criswell, 131 sheep | 6 55 |
| Sept. | 2. | R. Rees, 60 hogs | 3 60 |
| | 8. | John Criswell, 103 sheep | 5 15 |
| | 5. | Kennedy & Hume, 51 hogs | 3 06 |
| | 5. | " " 51 " | 3 06 |
| | 5. | R. M. & L. Smith, 24 cattle | 6 00 |
| | 10. | Kennedy & Hume, 56 hogs | 3 36 |
| | 12. | A. Renaker, 63 hogs | 3 78 |
| | 12. | Kennedy & Hume, 57 hogs | 3 42 |
| | 12. | " " 48 " | 2 88 |
| | 14. | " " 50 " | 3 00 |
| | 15. | R. M. & L. Smith, 22 cattle | 5 50 |
| | 16. | J. S. Chilton, 50 hogs | 3 00 |
| | 19. | J. W. Whitson, 18 cattle | 4 50 |
| | 19. | Martin & Scobee, 53 hogs | 3 18 |
| | 19. | George Cleek, 30 " & 2 cattle | 2 30 |
| | 22. | Talbot & Breeding, 56 hogs | 3 36 |
| | 26. | Kennedy & Hume, 41 " & 2 cattle | 2 96 |
| | 29. | R. Rees, 46 " | 2 76 |
| 172 Sept. | 29. | G. W. Mitchell, 46 hogs | 2 76 |
| | 29. | Kennedy & Hume, 16 cattle | 4 00 |
| Sept. | 30. | C. L. Talbot, 61 hogs | 3 66 |
| Octo. | 1. | Martin & Scobee, 59 hogs | 3 54 |

*Lottage Charged on Stock Shipped East.*

| | | | |
|---|---|---|---|
| Sept. | 16. | 19 cattle | 4 75 |
| | " | 12 sheep | 60 |
| | 22. | 18 cattle | 4 50 |
| | 22. | 15 " | 3 75 |
| | 25. | 39 " | 9 75 |
| | | | $160 31 |

*Amount of Lottage Charged to C. W. Keith from October 2nd to October 8th, 1886.*

| | | | |
|---|---|---|---|
| Oct. | 2. S. Bryan, 22 hogs | 1 | 32 |
| | 3. Drennan & Wilson, 113 sheep | 5 | 65 |
| | 3. Irvine & Meyers, 77 hogs | 4 | 62 |
| | 3. Kennedy & Hume, 19 cattle | 4 | 75 |
| | 6. Martin & Scobee, 41 hogs | 2 | 46 |
| | 6. Drennan & Wilson, 70 " | 4 | 20 |
| | 6. R. M. Smith, 65 hogs | 3 | 90 |
| | 6. " 88 sheep | 4 | 40 |
| | 6. L. Smith, 63 hogs | 3 | 78 |
| | 7. Talbot & Breeding, 52 hogs | 3 | 12 |
| | 7. John White, 60 hogs | 3 | 60 |
| | 3. Shipped East, 18 cattle | 4 | 50 |
| | | 46 | 30 |

173 On the same day, to wit, Octo. 15th, 1886, the following depositions taken on behalf of the defendant were filed herein. Said depositions are in words and figures as follows, viz:

*Notice.*

STATE OF KENTUCKY, } ss:
*County of Kenton,* }

GEORGE T. BLISS and ISAAC E. GATES
*vs.*
THE KENTUCKY CENTRAL RAILROAD COMPANY, &c.

Case No. 1651, pending in U. S. circuit court, sixth circuit and district of Kentucky (at Covington), on petition of C. W. Keith *vs.* The Covington Stock-Yards Co., &c.

The above-named C. W. Keith will take notice that on the 13th day of October, 1886, The Covington Stock-Yards Company above named will take the depositions of W. A. Peter and H. E. Huntington, witnesses, to be used as evidence in the trial of the above cause, at the office of Jos. C. Finnell, commissioner of the circuit court of the United States for the district of Kentucky (at Covington), between the hours of 8 a. m. and 5 o'clock p. m. of the same day, and that the taking of same will be adjourned from day to day between the same hours until they are completed.

T. F. HALLAM,
*Attorney for The Covington Stock-Yards Co.*

Service of the above notice is acknowledged and proof of the official character of the officer before whom the said depositions may be taken is by agreement waived.

Done this 13th day of Octo., A. D. 1886.

O'HARA & BRYAN,
*Att'ys for C. W. Keith.*

174 Depositions of sundry witnesses taken before me, Joseph C. Finnell, a commissioner of the U. S. circuit court within and for the State of Kentucky, pursuant to the annexed notice, and at the time and place therein specified, to be — in evidence on behalf of the defendant in an action pending in the U. S. circuit court, district of Kentucky, at Covington, in which C. W. Keith (in the suit of Bliss & Gates *vs.* Kentucky Central R. R. Co.) is plaintiff and the Covington Stock-Yards Co. is defendant, O'Hara & Bryan, attorneys, being present on behalf of plaintiffs, and T. F. Hallam, attorney, on behalf of defendant.

W. A. PETER, of lawful age, being by me first duly cautioned and sworn, deposes & says as follows:

Ques. 1. State your name, age, residence, & occupation.

Ans. W. A. Peter; age, 55 years; reside in Covington, Kentucky, and am superintendent of the Covington stock-yards.

Ques. 2. How long have you been superintendent of the Covington stock-yards?

Ans. Don't know exactly, but have been superintendent 5 or 6 years.

Ques. 3. Look at the statement filed Octo. 6th, 1886, entitled statement of Covington Stock-Yards Co. of amounts paid by C. W. Keith and make it a part of this deposition, and say whether
175 it is a correct statement from your books.

Ans. I have looked at statement and now say it is a correct statement, so far as I know.

Ques. 4. What has been the rule or custom of the Covington stock-yards as to transferring stock free through their yards?

Ans. Stock destined for over the river all went free.

Ques. 5. Has there been any change, and, if any, what, in that rule since March 1st, 1886?

Ans. Yes, sir; I don't mean about stock passing over the river free.

Ques. 6. If there has been any changes of the rules and charges of the stock-yards what was it?

Ans. On May 8 we commenced charging yardage or lottage on stock for sale in Covington—I mean that after the 8th of May we commenced charging on all stock taken out of the yards for Covington. I don't know how to explain.

Ques. 7. What had been the rule previously as to stock intended for sale in Covington at any other place than the Covington stock-yards?

Ans. No yardage in it.

176 Ques. 8. Had there or not been any other stock previously consigned to any other place than the Covington stock yards?

Ans. Yes, sir; there had been a few loads—a very few—five or six—consigned to other places.

Ques. 9. To what place had those five or six loads been consigned?

Ans. I am not positive, but I think they were consigned to C. W.

Keith. I had a statement, but believe it is lost—no, here it is, and I file it as a part of my deposition marked, "Exhibit A."

Ques. 10. Why were no charges made to Keith on those consignments and why did you change—make charges on similar consignments afterwards?

Ans. I was directed to do so by our president—that is, the president of the Covington Stock-Yards Co.

Ques. 11. So far as you know, did or not the president of the Covington Stock-Yards Co. have information before that you were delivering free to Mr. Keith?

Ans. I think he did, but don't know it.

Ques. 12. On what information do you found the opinion that he did so know?

Ans. I know he asked me if I was charging yardage, and I told him no, and he told me to charge yardage.

177 Ques. 13. Has any other person than Keith or Keith & Wilson ever demanded or received free delivery of stock at the Covington stock-yards except for transfer to other points than Covington?

Ans. None that I remember of, except horses and mules and blooded cattle; they always go free; there was never any yardage on such stock.

Ques. 14. In the account filed October 1st in this case, which columns show the charges of the Covington Stock-Yards Co.?

Ans. The column headed "freight" shows railroad freight charges; the columns headed "amount" show stock-yards charges.

Ques. 15. Do the words "not paid," where they are written on that account, apply only to the items opposite to which they are written?

Ans. They apply only to those items.

Ques. 16. What is the meaning of the entry opposite the item of June 5th, to wit, "Stock refused by K. & W., sold by Covington stock-yards, and money was held subject to their order?"

Ans. That was during the time that the K. C. R. R. was receiving their stock at their depot, and there was an order of court made changing it back to the Covington stock-yards. The K. C.

178 R. R. got the order before we did and sent it to us. We notified them of this stock and they refused to receive it. The K. C. R. R. then notified us to sell it, as it was perishable property, and we placed it in the hands of Embry & Co. and they sold it, and we now hold the check for sixty odd dollars.

Ques. 17. Who built and maintains and repairs the chutes at the Covington stock-yards?

Ans. The Covington Stock-Yards Co.

Ques. 18. Who furnishes and pays for the men to load and unload there?

Ans. The Covington Stock-Yards Co.

Ques. 19. Are you the agent for any railroad companies; and, if so, is it a separate appointment or held by virtue of your position as superintendent of the stock-yards?

Ans. I am agent of the L. & N. R. R., K. C. R. R., and P. C. and St. L. R. R.; am only agent through the stock-yards; they won't

take a corporation as agent, and I act as agent. The railroad companies pay the stock-yards company, and they pay me as superintendent; I get no pay from the railroads.

Ques. 20. How many cars could be unloaded at once at the Covington stock-yards?

179 Ans. Fourteen L. & N. cars can be unloaded at one time without moving the cars. I don't suppose we could unload more than four cars of the K. C. R. R. without moving the train a couple of feet. The platform and chutes were originally made to accommodate fourteen cars, but the length of some cars has been changed—cars are longer now than they were then.

Ques. 21. How many cars can be unloaded at once at the place Keith proposed to establish?

Ans. I don't think he could get two doors at the platform he's got there now; don't think he could unload two at once.

Ques. 22. Would there or not be any interference between him and the Covington stock-yards in unloading at the same time, if he established that place?

Ans. I would think so, because a train won't fit both places.

Cross-examination by J. W. BRYAN, attorney on behalf of Keith:

Ques. 1. What proportion of stock received — the Covington stock-yards are destined for Cincinnati?

Ans. There are not many of them billed there; there is over half of the cattle goes; I suppose there is over half that goes over.

180 Ques. 2. Do you mean that that proportion is not sold on this side of the river?

Ans. In the lamb season most all are sold here, and most of the hogs in their season are sold here, but as to cattle more than half go over the river.

Ques. 3. Have you or do you now make any charge for yardage or lottage for any stock received at the Covington stock-yards unless sold and weighed there other than the stock going to Keith or Keith & Wilson or the Banner stock-yards?

Ans. No, sir; for have had no other to charge up to the present.

Ques. 4. When did you so begin to charge for stock going to Banner stock-yards or Keith or Keith & Wilson?

Ans. May 8th, 1886, as have before stated.

Ques. 5. How does the Covington Stock-Yards Company ascertain what stock to make said charge for—that is, what stock is going to the Banner stock-yards or Keith or Keith & Wilson?

Ans. We ask them, and take it for granted they are telling us the truth.

Ques. 6. I understand, then, that when the Covington stock-
181 yards is told that stock which has not been weighed and sold in its yards, that is being taken out, if taken to any place other than Keith's yards, the stock-yards make no charge for yardage, but if taken to Keith's yards such charge is made. Am I correct?

Ans. Not to my knowledge.

Ques. 7. In what instance does the Covington Stock-yards Co. charge lottage on stock that has been in its yards, but not weighed and sold therein, when taken out and taken to any place other than to the Banner stock-yards?

Ans. I don't know of any other, because I don't know of any other that has been taken out, except, as have said before, as to mules, horses, and blooded cattle.

Ques. 8. Don't the Covington stock-yards charge lottage on all cattle, sheep, & hogs passing through its yards, although not weighed and sold therein, when destined to the Banner stock-yards, and does the Covington Stock-Yards Co. make such charge for such stock when going to any other place?

Ans. Yes, sir. We do charge when they go to the Banner stock-yards. We do not charge when they go to Cincinnati, and have had no occasion to charge for going to any other place in Covington, but would charge if there was any other place in Covington for them to go and were taken there.

182 Ques. 9. Suppose such stock taken to the Banner stock-yards, but not sold and weighed at the Banner yards, but driven to Cincinnati and sold and weighed there, do you or would you in such case charge lottage or yardage?

Ans. Yes, sir.

Ques. 10. Do you charge yardage on stock passing through your yards belonging to Keith which are shipped East over the railroads?

Ans. If they stop in our yards there's no yardage on them; they are fed and reloaded without yardage.

Ques. 11. If Keith takes stock from his yards or elsewhere to the Covington stock-yards to be shipped from there over the railroads East, do you charge him lottage on such stock?

Ans. Yes. sir.

Ques. 12. Were the chutes at the stock-yards built prior or since you became superintendent?

Ans. Built prior; most of them have had new floors, put in by me. I have remodeled them and repaired a greater portion of them.

Ques. 13. You have said in answer to cross-question 11 above that if Keith takes stock from his yards or elsewhere to the Covington stock-yards to be shipped from there over the railroads you

183 charge him lottage thereon. Do you charge lottage to any one else so taking stock to your yards for shipment other than Keith or Keith & Wilson?

Ans. Yes, sir.

Ques. 14. Who and under what circumstances?

Ans. I don't think we have had but one load since we commenced, and I think that belonged to Wilkie and Sleet. I don't remember of any others.

Ques. 15. Do you charge any one else lottage on stock offered at your yards for shipment?

Ans. Yes, sir; if there is any offered, except as before stated, horses, mules, and blooded cattle.

Ques. 16. Do you charge lottage on stock offered at your place for shipment by George Baker?

Ans. I have stated three or four times that Cincinnati stock was exempt. I do not charge George Baker because he is in Cincinnati.

Ques. 17. Are all the stock offered by Baker from Cincinnati or does he offer Kentucky stock for shipment?

Ans. All from Cincinnati that I ever heard of; no Kentucky stock.

184 Ques. 18. Do you make such charge against J. C. Hugh, of Boone county, Kentucky, offering for shipment his stock?

Ans. I havn't heard of him shipping out any, if he shipped any; I left my orders what to do.

Ques. 19. What were those orders?

Ans. To charge on all stock, unless it came from over the river.

Ques. 20. Why are stock from Kentucky charged for and stock from over the river allowed to go free?

Ans. I don't know exactly; think there's some arrangement with the railroad, but don't know for certain.

Ques. 21. How long has this been the practice of the stock-yards Co. to charge for Kentucky stock and not to charge for stock across the river?

Ans. Since the 8th of May, 1886.

Ques. 22. Were all stock prior to that date, whether from Kentucky or from across the river, received by the Covington stock-yards for shipment free of charge?

Ans. Yes, sir; I think it was.

185 Ques. 23. You say you think this was some arrangement made with the railroad. Do you know what the arrangement is, and who told you about it?

Ans. I don't know that there is any arrangement. I can't say who told me about it; it was my understanding, but I don't know that there was any arrangement.

Ques. 24. To what railroad had you reference?

Ans. The Kentucky Central.

Ques. 25. Why did you make this change on the 8th of May, charging for Kentucky stock?

Ans. I was told to do it by the president of the company, and that's all I know.

Ques. 26. Did he tell you to charge for stock received from Keith or Keith's yards?

Ans. Yes, sir; or any other place on this side of the river.

Ques. 27. Do you, as agent of the P. C. & St. L. R. R., charge more for stock offered you for shipment over that road, coming from Kentucky, than stock coming from Ohio?

Ans. No, sir.

186 Further taking adjourned until Thursday, Octo. 14, 1886, at 9 a. m.

JOS. C. FINNELL,
*U. S. Com'r.*

Met pursuant to adjournment Thursday, Oct'r 14, 1886, 9 o'clock a. m.

JOS. C. FINNELL,
*U. S. Com'r.*

Redirect examination by T. F. HALLAM, attorney for Covington Stock-Yards Co.:

Ques. 1. What has been the practice of the stock-yards in Cincinnati as to passing through their yards to the Covington yards stock not weighed or sold in the Cincinnati yards? Have they or not charged lottage or yardage on such stock?

Ans. They don't charge any that I know of. I never heard of them charging.

Ques. 2. How does stock pass from your yards to the Cincinnati yards, and what distance are they driven through the streets?

Ans. They are driven through the streets to the ferry, and from there through the streets to the Cincinnati yards. The distance in Covington is a mile or a mile and a quarter—eighteen or twenty squares; in Cincinnati the distance is between 5 and 5½ miles. They call the distance from our yards to the Cincinnati yards about seven (7) miles.

187 Ques. 3. What is the distance from the Banner yards to the general freight depot in Covington?

Ans. Between seven & eight squares, I think.

Ques. 4. Would you or not under your rule similarly charge yardage or lottage to any other person than Keith & Wilson who should use the Covington stock-yards in like manner with them to receive and handle stock in Covington?

Ans. Yes, sir.

Ques. 5. How are charges as to horses and mules and blooded cattle for Keith? Is he or would he be charged for them or not?

Ans. No, sir.

Ques. 6. Suppose you knew that the stock referred to by you in your answer No. 9, cross-examination, was destined for the Cincinnati stock-yards and were merely to pass through the Banner yards in like manner with their transit through your yards, and that no charge was to be made in the Banner yards, would you charge lottage or yardage?

Ans. No, sir.

Ques. 7. If Keith & Wilson should have their consignments weighed or sold in your yards and pay the usual fees therefor, would you charge them additional fees or anything different from your charges to others for similar services?

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Ans. No, sir.

Ques. 8. State whether any of the consignments to the Banner stock-yards from March 1st to May 8th were weighed in your yards, and which of them, if any, and whether any charge was made for such service.

Ans. Well, that I don't remember, except that first one, March 1st. The one on March 1st was weighed in our yards and no charge made, on account of Mr. Keith's scales being broken. The others I

don't remember where they were weighed, but think they was weighed in Mr. Keith's yards. I know the majority of them was.

Cross-examination continued by J. W. BRYAN, attorney for C. W. Keith:

Ques. 28. Referring to the stock sold by you, as stated in answer to question 16 (direct examination), sold, as you say, for non-payment of charges, did not Keith or Keith & Wilson tender you, as the agent of the K. C. R. R., the freight charges due thereon and demand the stock of you, and did you not refuse to deliver them without the payment of the lottage or yardage also?

189 Ans. Not that I know of. They were not sold for charges. My yardmaster made them a tender of the stock, and they refused to take them.

Ques. 29. What demand accompanied the tender? Was not yardage charges, in additional to freight charges, on the stock demanded when the stock were tendered?

Ans. Yes, sir; I suppose they knew what the regulations were. That stock went to the depot, and they sent it to us.

Ques. 30. Are not yardage or lottage charges exacted on all stock going to Keith or Keith & Wilson while the stock are in the railroad chutes, and, if not paid, don't you refuse to deliver the stock, but turn them into the Covington stock-yards and lock them up until such yardage charges are paid, or, if such charges were not paid, would you not do so?

Ans. No, sir; if so, there would be a week before they paid the bills. The bills are not presented for a week. They told my yardmaster that they would pay this, and the stock ever since has been turned out to them.

Ques. 31. Did you not at one time make this demand of them, and did they not tell your yardmaster that they would pay these charges, because he refused to deliver the stock to them unless paid?

190 Ans. Yes, sir; as everybody's stock is bound for charges.

Ques. 32. Have you not at all times since the 8th of May last demanded payment of lottage or yardage charges, in addition to freight charges, on all stock going to Keith & Wilson's or Banner's stock-yards, and refused to deliver such stock out of the R. R. chutes to them unless such yardage or lottage charges were paid or agreed to be paid?

Ans. Yes, sir; they agree- to pay them, and with that understanding we let them out; that is, since May 8th last.

Redirect examination by T. F. HALLAM, attorney for Covington Stock-Yards Co.:

Ques. 1. At the time that lot of stock was sold for freight and charges, was not Keith under injunction in the State court against receiving stock otherwise?

Ans. I don't remember the date now that the injunction was dis-olved. Mr. Keith & Mr. Wilson have both just stated it was while the injunction was pending.

Recross-examination by J. W. BRYAN, attorney for C. W. Keith:

191 Ques. 1. What instructions did the R. R. Co. give you when they delivered you that stock?

Ans. They sent it up in the night, I think, and they sent word up by some of the hands that they could not unload it, and that we would have to unload it. This was because of some change or order of court.

Ques. 2. What endorsement did they, the R. R. Co., make upon the way-bill they sent you for the stock?

Ans. If there was any endorsement upon it I don't remember it now; there may have been an endorsement, but I don't remember it. The original is now in the possession of the stock-yards, and I will file it as a part of my deposition, marked "Exhibit B."

Ques. 3. How long did you keep that stock before you sold it?

Ans. I think we kept it two days; I know we kept it 24 hours before we sold it.

W. A. PETER.

Also the deposition of H. E. HUNTINGTON, taken at the same time and place and to be read in same behalf.

By T. F. HALLAM, attorney, &c.:

Ques. 1. State your name, age, residence, and occupation?

192 Ans. H. E. Huntington; age, 36; reside in Cincinnati, Ohio; receiver of the K. C. R. R.

Ques. 2. Read answer No. 9 of C. W. Keith's deposition and state what are the facts as to any transactions or conversations between you and him on that subject.

Ans. I have read said answer No. 9. Mr. Keith says here that I began the delivery of stock to him at the city depot, in which he said that I said that delivery could not be continued any longer than some other place could be provided, which would be done in the course of a week or ten days. I did not say to him that this would be done. He also says I applied to him to know whether he had provided such place. I do not think he ever asked me the question as to whether I would provide such a place or not.

Ques. 3. Did he or not ever notify you or, so far as you know, any of your employees that chutes and platforms for the purpose of receiving and discharging his stock were ready for service and at your disposal free of charge, and that he was ready to execute bond for the collection of freight?

Ans. My impression is that he did, after I was enjoined by the Covington Stock-Yards Co.

193 Ques. 4. State whether, after the discontinuance of that injunction suit, you told Mr. Keith that you had no other place suitable for the delivery and reception of live stock, other than the Covington stock-yards, and that you had decided to deliver all of his stock at that place.

Ans. I would first have to ascertain at what time I was delivering stock to him at the depot.

Ques. 5. Look at the affidavits of Charles L. Brown and W. P. Walker and E. Randolph and letter filed July 15, 1886, and then answer whether, after the injunction suit in the State court was discontinued—that is, at any time in June after June 4th—you told Mr. Keith that you had no other place suitable for the delivery and reception of stock, other than the Covington stock-yards.

Ans. I did.

Ques. 6. When did you tell him so?

Ans. I can't fix the date, but it was after the discontinuance of the injunction suit.

Ques. 7. Did you or not at any time, and, if so, for how long, refuse to receive or deliver to Mr. Keith live stock at the general freight depot in Covington?

Ans. I did deliver, or offer to deliver, live stock at the K.
194 C. freight depot until ordered by the court to deliver at the Covington stock-yards.

Ques. 8. State whether any arrangement was made for such delivery and reception; and, if so, when and what was it.

Ans. I arranged to have chutes made to unload stock at depot of the K. C. on May 20th, and they were made and at the depot May 22, and employees were directed to look after stock that arrived there, and care for same.

Ques. 9. Can stock be safely loaded and unloaded at that place?

Ans. It can.

Ques. 10. To what extent does the switch interfere with the passage of stock from there to the streets?

Ans. It does not interfere at all, except by the switching of trains, and very little, if any, of that is done at that point, when stock would be unloaded.

Ques. 11. What sort of a grade is there from the platform at that point to the streets in the neighborhood?

Ans. I should say from 5 to 8 feet in the 100 feet.

195 Ques. 12. Is or not that grade used for heavy-laden wagons to pass up and down?

Ans. It is.

Ques. 13. Your attention is called to answer fourteen (14) in chief of Mr. Keith, stating that the use of his proposed chute and platform would not interfere with the main track of the railroad company. Say whether or not it would interfere with the use of the live-stock switch for loading and unloading at the Covington stock-yards.

Ans. It would interfere very much with the loading and unloading of cars at the Covington stock-yards, as they would have no room for switching purposes.

Ques. 14. Is there or not, in your opinion, any place in Covington other than the Covington stock-yards and the general freight depot where it would be possible to load and unload stock without interference with the general operations of the railroad, or special provision for such loading and unloading?

Ans. Not without making special provision.

Ques. 15. State whether you, as receiver, or the K. C. R. R., so far

as you know or are informed, have ever refused to receive from Mr. Keith, or Keith & Wilson, stock offered for shipment unless
196 they would submit to the charges of the Covington Stock-Yards Co., or ever agreed to ship stock over the C. & O. road, and have it come through the stock-yards without charges to Keith.

Ans. No.

Cross-examination by J. O'HARA, attorney for C. W. Keith:

Ques. 1. Are there any stock-pens for receiving live stock at the freight depot?

Ans. No, sir; no stock-pens.

Ques. 2. Did you not testify before Judge Barr, upon the trial of the motion before him at Louisville, made before him on the part of Mr. Keith in this case, that the K. C. R. R. Co. had no available ground at or near the freight depot for the construction of stock-pens, and is that not true?

Ans. I did; certainly.

Ques. 3. Which is the more convenient place to you, as receiver of the K. C. R. R. and shippers and consignees of live stock for the delivery and shipment thereof, the general freight depot or the Covington stock-yards?

Ans. Covington stock-yards.

H. E. HUNTINGTON.

197 STATE OF KENTUCKY, }
*Kenton County,* } *ss:*

I, Joseph C. Finnell, commissioner of the United States circuit court, district of Ky., in and for the county and State above named, duly commissioned and qualified, do hereby certify that the above-named W. A. Peter and H. E. Huntington, by me first severally sworn to testify the truth, the whole truth, and nothing but the truth, and that the depositions subscribed as above set forth were reduced to writing by me in the presence of the witnesses, and were subscribed by the said witnesses, respectively, in my presence, and were continued from day to day, as above set forth; that said depositions were taken at the time and place specified in the notice hereto attached, and that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit.

In testimony whereof I have hereunto set my hand and official seal this 15th day of October, A. D. 1886.

[SEAL.]

JOSEPH C. FINNELL,
*Com'r U. S. Cir. Court, K. D.*

The following is "Exhibit A," filed with the foregoing deposition of W. A. Peter, and to be taken and read as part thereof:

"EXHIBIT A."

*Statement of Stock Unloaded at Covington Stock-Yards and Passing through Covington Stock-Yards en route to Banner Stock-Yards from March 1st, 1886, to May 8, 1886.*

| Date. | W. B. | Car initial. | Car No. | Where from. | Consignor. | Article. | Freight. | Cattle. | Amount. | Hogs. | Amount. | Sheep. | Amount. | Total. |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| 1886. | | | | | | | | | | | | | | |
| M'ch 1 | 2 | L. & N. | 18433 | Verona | Kennedy & Hume | 1 car hogs | 10 00 | | 0 00 | 41 | | | | 10 00 |
| " 16 | 9 | " | 18154 | " | " " | 1 " cattle, hogs & sheep | 10 00 | 2 | | 38 | 0 00 | 16 | 0 00 | 10 00 |
| Ap'l 9 | 37 | C. & O. | 3200 | Carlisle | C. W. Keith | 1 " hogs | 25 00 | | | 83 | 0 00 | | | 25 00 |
| " 11 | 21 | " | 3133 | Millersburg | Martin & Scobee | 1 " " | 23 50 | | | 52 | 0 00 | | | 23 50 |
| | 22 | " | 3161 | " | " " | 1 " " | 23 50 | | | 55 | 0 00 | | | 23 50 |
| 14 | 50 | " | 3006 | Carlisle | " " | 1 " " | 25 00 | 13 | | 29 | | 4 | | 25 00 |
| | 51 | K. C. | 707 | " | " " | 1 " " | 25 00 | | | 70 | | | | 25 00 |

199 *Way-Bill No.* 4. *Car No.* 718.

Local way bill of freight forwarded from Morning View station to Covington station.

Date: June 5th, 1886.
Consignor: S. Bryan.
Marks: ——.
Consignee & destination: Keith & Wilson, Covington, Ky.
Description of articles: 13 sheep, 9 hogs.
Weight: 4,650.
Rate: 15.
Freight: 698.
Charges: ——.
Collectable elsewhere: ——.
Prepaid: ——.

W. A. Peter, Esq., sup't:

DEAR SIR: This car of sheep and hogs will be placed at your pens, and is at your disposal and risk.

Yours, W. P. WALKER, *Ag't.*

The following endorsements in pencil appear upon the face of said way-bill:

Returned to W. A. Peters, and I am instructed to say that we look to you for collection of this freight and care of stock.

W. P. WALKER, JR.

W. P. Walker, D. F. A.:

This car is not billed to Covington stock-yards—cannot unload it.

W. A. PETER, *Sup't.*

200 And on the 18th day of October the replication of the Covington Stock-Yards Company was filed herein; which said replication is in words and figures as follows, viz:

United States Circuit Court, District of Kentucky.

GEO. T. BLISS *et al.*, Complainants,
*versus*
THE KENTUCKY CENTRAL RAILROAD, &c., Defendants.

The replication of the Covington Stock-Yards Company to the answer of C. W. Keith to its intervening pleading.

This repliant, saving and reserving to itself all and all manner of advantage of exception which may be had or taken to the manifold errors, uncertainties, and insufficiencies of the answer of said defendant, Keith, for replication thereunto, saith that it will and doth aver, maintain, and prove its said intervening pleading to be true, certain, and sufficient in law to be answered unto by the said Keith, and that his answer is very uncertain, evasive, and insufficient in

the law to be replied unto by this repliant, without this, that any other matter or thing in said answer contained materially or effectually in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed
201 or denied, is true; all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said intervening pleading it has already prayed.

HALLAM & MYERS,
*For Stock-Yards Co.*

And on the 22nd day of December, A. D. 1886, the following consent order [was] entered herein, viz:

GEORGE T. BLISS and ISAAC E. GATES, Trustees,

*vs.*

THE KENTUCKY CENTRAL RAILROAD COMPANY, &c.

This day came C. W. Keith and The Covington Stock-Yards Company, by their respective counsel, and, on motion of the said stock-yards company and by consent of said Keith, it is ordered that Ed. W. Wilson be, and is hereby, united with the said Keith as copetitioner and respondent to the petition of intervener of the said stock-yards, and all the pleadings and proceedings had herein by and in the name of said Keith are to be taken and accepted as though the same had been made and done in the joint names of said Keith and Wilson as plaintiffs; and the pleadings and proceedings by and in the name of said stock-yards company against said Keith shall be taken and accepted as though the same had been made and done against the said Keith and Wilson as partners.

And on the same day, to wit, on the 22nd day of December,
202 A. D. 1886, a decree was entered herein; which said decree was in words and figures as follows, viz;

GEORGE T. BLISS and ISAAC E. GATES, Trustees,

*vs.*

THE KENTUCKY CENTRAL RAILROAD COMPANY, &c.

This cause coming on to be heard on the motion of C. W. Keith and E. W. Wilson, partners as Keith and Wilson, against the receiver, H. E. Huntington, to show cause, &c., &c., and on the petition of intervenor of the Covington Stock-Yards Company and the answer of said Keith and Wilson thereto, and the replication of said stock-yards company, and the response of the receiver to said rule, and the proof submitted by the parties, to wit, the petition and affidavit of C. W. Keith, filed June 18, 1886; the affidavit of said Keith, filed July 3, 1886; the affidavits of C. L. Talbott, J. P. Drenan, F. Winstead, Lycurgus Smith, Richard Rees, Samuel Bryan, E. D. Wilson, George R. Martin, filed on the 12th day of July, 1886; the second and third affidavits of E. W. Wilson, and notice dated May 8, 1886, from the stock-yards company, and notice from Walker, agent,

to Keith, dated June 26, 1886, and filed herein on the 15th of July, 1886; the deposition- of C. W. Keith, E. W. Wilson, and J. R. Ledyard on the part of the said Keith and Wilson, and the following on behalf of the receiver and said railroad company and said stock-yards company, to, wit: Response of the said receiver to rule, filed
203 June 21, 1886, and additional response of receiver, filed June 22, 1886; copy of the contract between the Ky. Central Railroad Company and the Covington Stock-Yards Company, filed July 10, 1886; response of receiver and two memo's of agreement between the Ky. Central R. R. Co. and C. W. Keith, filed July 12, 1886; affidavit of W. P. Walker & exhibits; memo. of agreement between H. E. Huntington, receiver, & Keith & Wilson; affidavit of E. Randolph and letter of receiver to him, of date 20th May, 1886; affidavit of L. Hood & exhibits; affidavit of S. Hall and affidavit of C. L. Brown and exhibits, filed July 15, 1886; affidavit of R. Carroll, filed July 30, 1886, and the depositions of W. A. Peter and H. E. Huntington; the statement of C. L. Jungerman, filed 30 July, 1886, and the following statement of W. J. Lippencott, whose affidavit has been taken, but has been lost, in substance, that he, the affiant, was superintendent, at the time, of the Union stock-yards in Cincinnati, Ohio, and that it was and is the practice at those yards to charge a lottage fee for all stock passing through the same to and from railroad cars—by agreement of parties, to be considered as evidence on behalf of said receiver and said railroad company and said stock-yards company:

And after hearing argument of counsel, *and* the court, being sufficiently advised, doth find, order, and decree as follows:

It is the duty and legal obligation of the Kentucky Cen-
204 tral Railroad Company, as a common carrier of live stock, to provide suitable and convenient means and facilities for receiving on board its cars all live stock offered for shipment over its road and its connections from the city of Covington, and for the discharge from its cars of all live stock brought over its road to the said city of Covington, free of any charge other than the customary transportation charges to consignors or consignees, and that the said petitioners, Keith & Wilson, live-stock dealers and brokers, doing business at the city of Covington, and proprietors of the Banner stock-yards at that place, are entitled to so ship and receive over said road such live stock without being subject to any such additional charges imposed by said receiver, said railroad company, or other person or corporation.

The court further finds and decrees that the alleged contract entered into by and between the said railroad company and the said Covington Stock-Yards Company, of date the 19th day of November, 1881, does not entitle the said stock-yards company to impose upon any shipper of live stock over said road, passing such stock through the yards of said company to or from the cars of said railroad company, any charge whatever for such passage.

It is stipulated in said contract that said stock-yards company shall establish and maintain suitable yards or pens for receiving, housing, feeding, and caring for live stock, and to receive all

such stock, and load and unload the same upon and from the cars of said company transported on or to be transported over said road for a compensation of sixty cents per car-load, to be paid by said railroad company for and during the period of fifteen years from the date of said contract, which has not yet expired, while the said railroad company agreed that it would not during said period establish or allow to be established on the line of its road or on its right of way in said city of Covington any other platform or depot than that of said stock-yards company for the receipt or delivery of such live stock.

The court doth further find and decree that since the 8th day of May, 1886, the said stock-yards company has illegally exacted from the said Keith and Wilson the sum of $——, and from sundry of their consignors the further sum of $1,209.19, which it is now ordered and decreed shall be repaid to said Keith and Wilson by the said stock-yards company, to wit, the said sum of $——, to them for their own use, and the said sum of $1,209.19 to them for the use and benefit of their said consignors, and also the costs herein expended by said Keith and Wilson, to be taxed by the clerk.

The court doth further find that the general freight depot of the said railroad company in the said city of Covington, at the terminus of its road between Pike and Eighth streets, is not a suitable or convenient place for the receipt and delivery of live stock brought to the said city or to be shipped therefrom over said road, and neither said railroad company nor said receiver having provided such suitable depot or place therefor, except the yards of said stock-yards company, it is now ordered and decreed that the said railroad company and said receiver shall hereafter receive and deliver from and to the said Keith & Wilson at and through the said Covington stock-yards all such live stock as may be brought to them or offered by them for shipment over said road and its connections, upon the consent of said stock-yards, in writing, that it may be so done being filed in this court and cause on or before the 1st day of January next after the entry of this decree, free of any charge for passing through said yards to and from the cars of said railroad company. In default of such consent being so filed, it is ordered and decreed that upon said Keith & Wilson putting the platform and chute erected by them on the land of said Keith adjacent to the live-stock switch of said railroad company north of said stock-yards the said railroad company and said receiver shall receive and deliver all such live stock to said Keith & Wilson as shall be consigned to them or either of them or be offered by them or either of them for shipment at said platform.

The said Keith and Wilson shall provide an agent or representative at said platform to receive such cattle as they may be notified by said railroad company or said receiver are to be delivered to them thereat, and they shall give the said railroad company or said receiver reasonable notice of any shipment desired to be made by them from said platform to conform to the departure of live-stock trains on said road; to all of which the said Covington Stock-Yards Company excepts, and said Covington Stock-

Yards Company prays an appeal to the Supreme Court of the United States, which is granted.

And on the 19th day of January, A. D. 1887, an affidavit of Chas. W. Keith was filed herein. Said affidavit is in words and figures as follows, viz.:

*Affidavit of C. W. Keith.*

United States Circuit Court, District of Kentucky.

GEO. T. BLISS & ISAAC E. GATES, Complainants,
*ag'st*
THE KENTUCKY CENTRAL RAILROAD CO., Defendant.

The affiant, C. W. Keith, says he is one of the firm of Keith and Wilson, which firm, under decree of this court, rendered in the above cause at the late December term in certain proceedings by said firm against H. E. Huntington, the receiver herein, and said defendant, The Kentucky Central Railroad Company, became entitled to have all live stock brought over the said railroad to Covington, consigned to said firm, delivered to them without other charge or expense than the usual and customary transportation charges, and it was in said decree ordered that the said receiver and said company should so deliver such live stock to said firm at and
208 through the yards of the Covington Stock-Yards Company without other fee or charge, than as aforesaid, provided the said stock-yards company should file its written consent thereto in this cause on or before the 1st day of January, 1887, and without said consent, so filed, the said delivery and receipt of such live stock should be made to and from said firm at the platform of the affiant, on said company's live-stock switch, near the platform of said stock-yards, and affiant says that no such consent was filed by said stock-yards company as required within the time prescribed, nor yet; nevertheless the said receiver and said company have wholly failed and refused to deliver stock consigned to said firm and brought to Covington over said road to said firm at the platform of said Keith, though the same is, and has been since at and before said 1st day of January, ready and in condition to receive such stock; but said receiver and company continue to and have delivered a large quantity of stock so consigned to said firm at the said Covington stock-yards, and said firm has been required to pay and have paid the same charges thereon for passing the same from the said company's cars to the highway as before said decree, and have also been required to pay lotage charges upon stock shipped over said road from Covington to other points on said road and its connections.

Wherefore affiant prays that a rule may be awarded against said H. E. Huntington, receiver, to show cause why he does not
209 comply with the terms of said decree.

C. W. KEITH.

Sworn to before me by C. W. Keith this 19th day of January, 1887.

JOS. C. FINNELL, *Clerk.*

And on the same day, to wit, the 19th day of January, A. D. 1887, the following order [was] entered herein, viz:

GEORGE T. BLISS and ISAAC E. GATES, Trustees,
*vs.*
THE KENTUCKY CENTRAL RAILROAD COMPANY, &c.

This day came Keith & Wilson, by O'Hara & Bryan, their attorneys, and filed the affidavit of C. W. Keith, and, on his motion, it is ordered that a rule issue herein against H. E. Huntington, the receiver herein, returnable to-morrow morning (Thursday, January 20), at ten o'clock, requiring him then and there to show cause why he has failed to comply with the decree rendered herein, commanding him to deliver live stock brought over the Kentucky Central railroad to Covington, consigned to Keith and Wilson, to them at the platform of C. W. Keith, adjacent to the live-stock switch of the said railroad company in Covington.

And on the 20th day of January, A. D. 1887, the following order [was] entered herein, viz:

GEORGE T. BLISS and ISAAC E. GATES, Trustees,
*vs.*
THE KENTUCKY CENTRAL RAILROAD COMPANY, &c.

210 The motion of Keith and Wilson against H. E. Huntington, receiver, coming on for hearing, and the court being advised, it is ordered that from now until the further order of the court the receiver and Kentucky Central Railroad Company will deliver to them all live stock consigned to said Keith and Wilson and brought to Covington over the said railroad at the platform erected by said Keith, adjacent to the live-stock switch of said road, and receive from them at that place all live stock offered by them for shipment over said road and its connections, it appearing to the court that the Covington Stock-Yards Company has not filed its consent in this court as provided in the decree upon the intervening petition of said stock-yards company. The stock-yards company, by their attorneys, Messrs. Hallam and Myers, come and except to the foregoing order.

And on a day following, to wit, on the 25th day of January, A. D. 1887, the following order [was] entered herein, viz:

United States Circuit Court, District of Kentucky.

GEORGE T. BLISS and ISAAC E. GATES, Trustees,
*vs.*
THE KENTUCKY CENTRAL RAILROAD COMPANY.

It is ordered that the appeal bond heretofore tendered by the Covington Stock-Yards Company in the cause on its appeal from the decree on the interpleader between said Covington Stock-Yards Company
211 and Charles W. Keith and Edward W. Wilson be, and the same is, accepted, approved, and filed, but the same is to operate

only as a supersedeas to the extent of the judgment rendered against said Covington Stock-Yards Company, and not further or otherwise, and particularly is not to operate as a supersedeas so far as concerns any order, decree, or judgment directed to the receiver herein affecting the receipt, delivery, or shipment to or by said Keith and Wilson of live stock on or over the line of said railroad and its connections.

To all of the foregoing order, except so much as accepts, approves, and files said appeal bond, the said Covington Stock-Yards Company excepts.

The appeal bond mentioned in the foregoing order and filed herein on January 25th, A. D. 1887, is in words and figures as follows, viz:

Circuit Court of the United States, District of Kentucky.

GEORGE T. BLISS and ISAAC E. GATES, Trustees,
*vs.*
THE KENTUCKY CENTRAL RAILROAD COMPANY.

Know all men by these presents that we, The Covington Stock-Yards Company, principal, and John E. Norris, surety, are held and firmly bound unto C. W. Keith and E. W. Wilson (partners as Keith and Wilson) in the sum of two thousand five hundred dollars,
212 to be paid to the said C. W. Keith and E. W. Wilson, partners as Keith and Wilson, their executors or administrators; to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 13th day of January, A. D. 1877.

Whereas the above-named Covington Stock-Yards Company hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above-entitled suit by the circuit court of the United States for the district of Kentucky, at Covington:

Now, therefore, the condition of this obligation is such that if the above-named Covington Stock-Yards Company shall prosecute its said appeal to effect and answer all damages and costs if it shall fail to make good its plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JOHN E. NORRIS. [L. S.]

Sealed and delivered in presence of—
SAM'L B. CRAIL.

(Endorsed.)

STATE OF KENTUCKY, }
*County of Jefferson,* } *ss:*

J, John E. Norris, the within-named surety, do solemnly swear that I am reasonably worth the sum of twenty-five hundred dollars

over and above all debts, liabilities, and property exempt from execution, and that I executed and delivered the within bond
213 without any condition, reservation, or agreement other than appears on the face thereof.

JOHN E. NORRIS.

Subscribed and sworn to before me this 13th day of January, 1887.

Witness my hand and seal.

SAM'L B. CRAIL, [L. S.]
*Com'r U. S. Cir. Court, Ky. Dist.*

UNITED STATES OF AMERICA, }
*District of Kentucky,* } ss:

I, Joseph C. Finnell, clerk of the circuit court of the United States for the sixth judicial circuit and district of Kentucky, at Covington, do hereby certify that the foregoing two hundred and thirteen (213) pages contain a true and complete transcript of all the pleadings and proceedings had in a certain cause pending in said court, wherein George T. Bliss and Isaac E. Gates, trustees, are complainants and The Kentucky Central Railroad Company, &c., are defendants, on the petition of C. W. Keith for a rule against H. E. Huntington, receiver, and on the interpleader of the Covington Stock-Yards Company, as the same now appears of record and from the files of this office.

Witness my hand and the seal of said circuit court, at Covington, this 9th day of February, A. D. 1887, and of our Independence the 111th year.

[Seal of the 6th Circuit Court, Ky. Dist., U. S. of America.]

JOS. C. FINNELL, *Clerk*,
By CHAS. Y. GRAY, *D. C.*

Endorsed on cover: Kentucky C. C. U. S. No. 1347. The Covington Stock-Yards Company, appellant, *vs.* Charles W. Keith and and Edward W. Wilson, partners as Keith & Wilson. Filed February 26, 1887.

# UNITED STATES SUPREME COURT,

OCTOBER TERM, 1889.

No.....

The Covington Stock Yards Company,

APPELLANT,

—VS—

Charles W. Keith and Edward W. Wilson,

PARTNERS AS KEITH & WILSON, APPELLEES.

Appeal from the Circuit Court of the United States for the District of Kentucky.

E. D. BAXTER,

of Counsel for Appellant.

Marshall & Bruce, Stationers, Nashville, Tenn.

# UNITED STATES SUPREME COURT,
## OCTOBER TERM, 1889.

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NO. .....

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THE COVINGTON STOCK YARDS COMPANY,
*Appellant,*

*VS.*

CHARLES W. KEITH AND EDWARD W. WILSON,
PARTNERS AS KEITH & WILSON,
*Appellees.*

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APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF KENTUCKY.

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## STATEMENT OF THE CASE.

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I.

Prior to 1863 the Kentucky Central Railroad Company had a platform and chutes South of Fourteenth Street, in Covington, where live stock were received and delivered. There were no stock pens or yards connected with the platform; there

operations agreed to be done by said company; and generally to do such labor as is usually performed by managers of stock yards of the best class, viz., to load, unload, and care for, in the best manner, and at the risk of said stock yards company, all live stock delivered to said railroad company. Said stock yards company also agreed that the delivery of stock on switches, or sidings provided for that purpose, should be considered a delivery of such stock to said company, and that said company would be responsible from that time for said stock; that said company would act as agent for the railroad company in the collection of freights and charges upon live stock; that said stock yards company would in no event charge more than sixty cents per car of full loads for loading, and the same for unloading, and that it would make no charge for handling less than full loads; and that the charges for feeding and caring for live stock, should not be more than is charged for similar services and supplies, by other stock yards in this country.

In consideration of the premises, said railroad company agreed to require all cars that may be loaded at said yards for shipments south or east, to be carefully bedded, which the stock yards company agreed to do, at the rate usually charged in other yards.

Said railroad company also agreed to make said yards its depot for delivery of all its live stock;

and, during the term of said contract, not to build, nor allow to be built, on its right of way any other depot, or yards for the reception of live stock. Said railroad company further agreed, in the event it should extend its track over the river, that, during the term of said contract, the rate of freight from all points on its road and connections should not be less than five dollars per car more to the Union Yards of Cincinnati, than the rate to Covington Yards from the same points; and that in making its business arrangements with any other railroad, or transportation line, the same should be subject to the agreements mentioned in said contract, and that the Covington Stock Yards should be the depot for all live stock received from its connections for Cincinnati or eastern markets.

Said contract was to remain in force for fifteen years.

Trans., p. 15.

## IV.

On January 28, 1886, George T. Bliss and Isaac E. Gates, Trustees, filed a bill in the Circuit Court of the United States, for the District of Kentucky, at Covington, against the Kentucky Central Railroad Company, for the foreclosure of a certain mortgage upon said railroad, and a Receiver was appointed to take possession of, and operate said road, until the further order of said court.

Trans., p. 2.

The five years lease of the Banner Stock Yards, which Keith made to the Covington Stock Yards Company, having expired in March, 1886, he took possession of the Banner Stock Yards, and reopened them for business, in competition with the Covington Stock Yards Company; and on May 8, 1886, said company notified him, that on and after that date, "yardage" would be charged on all stock unloaded at the Covington Stock Yards, and taken to his yards.

Trans., p. 33.

Immediately upon receipt of said notice, Keith applied to the Receiver to provide some other suitable place at which stock owned, or shipped by, or consigned to him, and passed over said road, might be delivered to him without the payment of charges other than the customary charges for the transportation of live stock (*Trans., p.* 3); and on May 14, 1886, he notified the Receiver in writing to deliver no stock owned by, or consigned to him, to the Covington Stock Yards Company, and to deliver it to him, at such convenient place in Covington, as the Receiver might designate, free from all charges of every kind and nature against him, after it leaves the cars.

Trans., p. 38.

On May 16, 1886, Keith notified the general freight agent of the Receiver, that he desired live stock consigned to him, to be delivered at the general freight depot at Covington.

Trans., p. 37.

On May 20, 1886, the Receiver ordered his Superintendent to prepare suitable gangways, or chutes, so that two cars could be unloaded at one time for Keith, at the south end, and on the west side, of the receiving freight depot; and on May 22, 1886, the gangways, or chutes, were prepared ready for use.

Trans., pp. 34, 35.

The Receiver's employes were directed to look after stock that arrived there, and to care for the same.

Trans , p. 90.

After said gangways, or chutes, were prepared, deliveries of live stock were made to Keith at said freight depot, except during the pendency of a certain injunction, between June 4, and June 14, 1886.

Trans., p. 37.

Sometime between the 20th of May, and the 4th of June, 1886, the Receiver agreed with Keith, that if Keith would himself provide a platform and chute, adjacent to the switch from which the Covington Stock Yards Company received live stock, the Receiver would deliver consignments of stock to Keith, at such platform; and Keith accordingly purchased a lot of ground at the point agreed, and erected a suitable chute and platform, which was ready for the reception of live stock on June 4, 1886.

Trans., p. 3.

But the Receiver says that he unwittingly made the agreement; that he was afterwards advised that it was his legal duty to respect and observe the contract between the railroad company and the Covington Stock Yards Company, until otherwise instructed by the Court; and that the place at which Keith had constructed his platform and chute, was afterwards discovered to be impracticable in view of the necessities of the general business of the railway.

Trans., p. 51.

On June 4, 1886, the day Keith completed his platform and chute, he was enjoined from using them, and from receiving stock from said railroad, elsewhere in Covington, than through the yards of the Covington Stock Yards Company, by whom said injunction was obtained from the Kenton Chancery Court of Kentucky. (*Trans.*, *p.* 3.) The Receiver, and the railroad company, were named as parties to said injunction suit; and application was made to the Circuit Court of the United States, for leave to take out process, and prosecute said suit, against the Receiver; but said leave was denied, for the reason that it was deemed that the Circuit Court of the United States was the only proper one wherein to prosecute said suit (*Trans.*, *p.* 7); and the suit in the State Court was accordingly dismissed on June 14, 1886. (*Trans.*, *p.* 3.)

V.

On June 18, 1886, Keith filed his petition in the Circuit Court of the United States, in the case of *Bliss and Gates, Trustees*, vs. *Kentucky Central Railroad Company*, praying for a rule upon the Receiver, to show cause why he would not deliver to Keith, all live stock owned by him, or consigned to him, and brought over said railroad to Covington, at some convenient and suitable place, outside of the lots or yards of the Covington Stock Yards Company, free from other than the customary freight charges for transportation thereof over said road.

Trans., pp. 1–4.

On the same day a rule was granted requiring the Receiver to show cause why he should not deliver to Keith all live stock owned by, or consigned to him, and brought to Covington upon said railroad, either at and through the yards and pens of the Covington Stock Yards Company, free from cost to him, or his consignors therefor, or to deliver all such stock to him, at the platform and chute, adjacent to, and outside of said yards, provided by him, and connected with said railroad track.

Trans., pp. 4–5.

On June 21, 1886, the Receiver filed a response to said rule, insisting, among other things, that the Covington Stock Yards Company was interested in the question, and ought to be made a party to the proceeding.

Trans., pp. 5–7.

On June 22, 1886, an order was made that the Receiver should, until further order, deliver to Keith, all live stock owned by, or consigned to him, and transported to Covington on said railroad, and to receive from him, for shipment over said road, all such live stock as he should offer for shipment, at some convenient point on the line of said road in Covington, upon payment by Keith of all customary charges for transportation, unless the same should have been paid by others, and without the addition of any charges for lottage, or otherwise, accruing after the said stock should have been discharged from the cars of the railroad company. Said delivery and receipt might be at the depot already established by said company for the delivery and receipt of live stock in the yard of the Covington Stock Yards Company, or at the platform erected by Keith on his own land, near the said Covington Stock Yards, or at any other convenient and suitable point to be provided by the Receiver, or by Keith, in case the Receiver should fail so to provide.

It was further ordered that the Covington Stock Yards Company should have leave to file an intervening petition, making the railroad company and Keith parties, and requiring them to litigate the questions between them, touching the validity of the said agreement between the railroad company and the Covington Stock Yards Company.

Trans., pp. 8, 9.

On June 26, 1886, the Covington Stock Yards Company filed an intervening petition in said cause. It averred that petitioner was a corporation organized under the laws of Kentucky, for the purpose of conducting a live stock business in Covington, and therein, for profit, to receive, ship, house, feed, and generally to care for the live stock of others, shipped to, or from Covington, but not to sell or buy any live stock, or to transact any business, other than as aforesaid; that it in good faith undertook to transact its said business at reasonable and equal rates for all applicants, and has always done so; that it entered into the contract of November 19, 1881, with the Kentucky Central Railroad Company, and expended $60,000 in constructing said stock yards, with depot, platforms, and chutes; that said stock yard or depot is at the most convenient place therefor in Covington, and is sufficient and convenient for all persons shipping and receiving live stock on said railroad, and is convenient and necessary to the proper operation of said road; that no other depot is necessary, or convenient to the operation of said road, except the passenger depot, and the general freight depot; that Keith had commenced to construct, adjoining the Covington Stock Yards, other, and competing depots, platforms, and chutes, for the reception and shipment, unloading and loading of live stock, carried for others, upon said railroad; and that if he was allowed to use them as proposed, it would damage the Covington Stock Yards Company, in a sum exceeding $10,000. Said company denied that

it has ever discriminated against Keith, or any other person.

Trans., pp. 9–11.

On October 1, 1886, Keith answered said petition of interpleader. He averred that since May 8, 1886, he and those shipping, or consigning live stock to him, or his yards, or lots, and brought to Covington over said railroad, have been required by the Covington Stock Yards Company to pay lottage on all stock received through the lots and yards of said company, but unless said stock were taken to Keith's lots, or yards, neither he, nor his consignors, were required to pay said lottage charge. He therefore claimed that he, and his consignors, have been discriminated against by said company, in regard to said lottage charge.

He stated that he is, and always has been willing that stock owned by, or consigned to him, and brought over said railroad, may be delivered to him through the Covington Stock Yards, provided he, or his consignors, shall not be required to pay lottage or other charges thereon than the customary freight charges for transportation.

Trans., pp. 53–56.

The words "lottage" and "yardage" seem to be sometimes used in the record as synonymous; but, as I understand it, there is a distinction between them. Where sheep, hogs, and common

cattle are sold in a stock yard, they are weighed on the stock yard's scales, and a charge is made for selling and weighing, which is known as "lottage." (*Trans.*, *p.* 58.) That charge amounts to five cents per head on sheep, six cents per head on hogs, ten cents per head on calves, and twenty-five cents per head on all other kinds of common cattle. (*Trans.*, *p.* 38.) Blooded cattle, horses, and mules are not sold by weight, and no "lottage" is ever charged on them. (*Trans.*, *p.* 83.) Where cattle, hogs, or sheep are not sold in a stock yard, and, therefore, are not weighed there, and are merely driven through the stock yard, in going to or from the cars, the Covington Stock Yards Company claims the right to charge for "yardage;" and this is the charge which is really complained of in this case. Prior to May 8, 1886, said company made no charge for "yardage;" but on that day the company notified Keith that it would thereafter charge him "yardage" on all stock unloaded at the Covington Stock Yards, and taken to his yards. (*Trans.*, *p.* 33.) Keith construed the notice as aimed at him alone, and as discriminating against him. But the Superintendent of the company states that the company would charge "yardage" against any other person who should use the company's yards in like manner with Keith, to receive and handle stock at Covington. (*Trans.*, *p.* 87.) But as no other persons received and handled stock at Covington except Keith, and his partner Wilson, the company has not, in fact, collected "yardage" from anyone else. (*Trans.*, *p.* 84.)

It appears that the Union Stock Yards in Cincinnati, Ohio, charge a fee for all stock passing through the same, to and from the railroad cars.

Trans., p. 95.

## VI.

On December 22, 1886, the Court rendered a decree, in which it was declared and decreed:

*First.*—That it is the duty and legal obligation of the Kentucky Central Railroad Company, as a common carrier of live stock, to provide suitable and convenient means and facilities for receiving on board its cars, all live stock offered for shipment over its road from the city of Covington, and for the discharge from its cars of all live stock brought over its road to the said city of Covington, free of any charge other than the customary transportation charges to consignors or consignees.

*Second.*—That Keith & Wilson, live stock dealers and brokers doing business at the city of Covington, and proprietors of the Banner Stock Yards at that place, are entitled to so ship and receive over said road, such live stock, without being subject to any such additional charges imposed by said Receiver, said railroad company, or any other person or corporation.

*Third.*—That the contract entered into by and between said railroad company and said Covington Stock Yards Company, on November 19, 1881, does not entitle said stock yards company to impose

upon any shipper of live stock over said road, passing such stock through the yards of said company, to or from the cars of said railroad company, any charge whatever for such passage.

*Fourth.*—That since the 8th day of May, 1886, said stock yards company has illegally exacted from said Keith & Wilson the sum of $——, and from sundry of their consignors the further sum of $1,209.19, which it was ordered and decreed should be repaid to said Keith & Wilson by said stock yards company, to-wit: The said sum of $—— to them for their own use, and the said sum of $1,209.19 to them for the use and benefit of their said consignors, and also the costs therein expended by said Keith & Wilson, to be taxed by the clerk.

*Fifth.*—The Court found and declared that the general freight depot of said railroad company in said city of Covington, is not a suitable or convenient place, for the receipt and delivery of live stock, brought to said city, or to be shipped therefrom, over said road; and neither said railroad company, nor said Receiver, having provided such suitable depot or place therefor, except the yards of said stock yards company, it was ordered and decreed that said railroad company, and said Receiver, should thereafter receive and deliver from and to said Keith & Wilson, at and through said Covington Stock Yards, all such live stock as may be brought to them, or offered by them, for shipment over said road, and its connections, upon the consent of said stock yards in writing, that it may be

so done, being filed in said Court and cause, on or before the 1st day of January next thereafter, free of any charge for passing through said yards to and from the cars of said railroad company; and it was further ordered that in default of such consent being so filed, upon Keith & Wilson putting the platform and chute, erected by them on the land of said Keith, adjacent to the live stock switch of said railroad company, north of said stock yards, said railroad company, and said Receiver, should receive and deliver, all such live stock to said Keith & Wilson, as should be consigned to them, or either of them, or be offered by them, or either of them, for shipment—at said platform. To all of which said Covington Stock Yards Company excepted; and prayed an appeal to this Court, which was granted.

Trans., pp. 94–97.

The appeal bond was executed January 13, 1877 (mistake for 1887), (*Trans., p.* 99); and it was accepted and approved by the Court January 25, 1887.

Trans., p. 98.

## VII.

## SPECIFICATION OF THE ERRORS RELIED UPON.

The appellant respectfully submits that said decree of December 22, 1886, is erroneous, and should be reversed in the following particulars, viz.:

*First.*—In declaring that it is the duty and legal obligation of the Kentucky Central Railroad Company, as a common carrier of live stock to provide suitable and convenient means and facilities for receiving on, and discharging from its cars, all live stock free of any charge other than the customary charges for transportation.

*Second.*—In declaring that the contract of November 19, 1881, between appellant and said railroad company does not entitle appellant to impose upon any shipper of live stock over said road, any charge whatever for passing such stock through appellant's stock yards, to or from the cars of said railroad company.

*Third.*—In declaring that Keith & Wilson are entitled to receive and ship live stock over said railroad at Covington, and to pass it to and from the cars of said railroad company, through appellant's stock yards, without paying appellant any thing at all for such use of said stock yards.

*Fourth.*—In declaring that appellant has, since May 8, 1886, illegally exacted from Keith & Wil-

son the sum of $——, and from sundry of their consignors the further sum of $1,209.19, and in ordering appellant to repay to Keith & Wilson the said sum of $—— for their own use, and the said sum of $1,209.19 for the use and benefit of their said consignors, and also the costs therein expended by Keith & Wilson.

*Fifth.*—In ordering that if appellant would not consent for Keith & Wilson to pass their live stock through appellant's yards free of any charge, said railroad company and said Receiver should receive and deliver such live stock at a platform and chute erected by Keith & Wilson near appellant's stock yards.

And for the errors above assigned, appellant prays that said decree may be reviewed, reversed and for nothing held.

## X.

## ARGUMENT.

All of the errors assigned may be considered together; as they all depend upon the correctness of the proposition, asserted by the Court below, to the effect, that it is the duty, and legal obligation, of a railroad company, as a common carrier of live stock, "to provide suitable and convenient means and facilities, for receiving on board its cars, all live stock offered for shipment over its road, and its

connections," and "for the discharge of all live stock brought over its road;" "*free of any charge other than the customary transportation charges.*

Trans., p. 95.

I concede that it is the duty, and legal obligation of a railroad company to provide the means and facilities referred to; but I deny that it is bound to do so "free of any charge other than the customary *transportation* charges."

The decree of the Court below seems to proceed upon the idea, that all the service rendered by a railroad company in regard to any kind of traffic, must be covered by its "customary *transportation* charges," however exceptional or expensive the particular traffic may be. But what are known as "*terminal* charges" have long been recognized to be as legitimate as "*transportation* charges." In England terminal charges, as defined by various special acts, include "a reasonable sum for the loading, unloading and covering, and for delivery and collection of goods, *and other services incidental to the business of a carrier*, and a further reasonable sum for *warehousing* and *wharfage*, and for *any other extraordinary services* which may be reasonably and properly performed by the company."

Lely Railway and Canal Traffic Acts, p. 78.

Under "the Regulation of Railways Act 1873," the English railway commissioners are empowered "to hear and determine any question, or dispute

which may arise with respect to the terminal charges of any railway company, where such charges have not been fixed by any act of Parliament, and to decide what is a reasonable sum to be paid to any company for loading and unloading, covering, collection, delivery, *and other services of a like nature.*"

**Lely Railway and Canal Traffic Acts, p. 77.**

The Queen's Bench Division in 1886 held "that station accommodations, the use of sidings, weighing, checking, clerkage, watching, and labeling, provided and performed by the company, in respect of goods traffic carried by them as carriers, may be, and *prima facie* are, services incidental to the duty or business of a carrier," * * and that they "may be the subject of a separate reasonable charge, in addition to the rates prescribed" for the "conveyance," or transportation of animals and goods.

**5 Railway & Canal Traffic Cases, p. 28, Hall & Co. vs. L. B. & S. C. R'y Co.**

The act of Congress to regulate commerce recognizes the right of railroad companies to make "terminal charges," in addition to "transportation charges." The sixth section of the act provides that every common carrier subject to the provisions of the act, shall print, and keep open to public inspection, schedules showing the rates, and fares, and "charges, for the *transportation* of passengers and property," * * and that the schedules "shall also state, separately, the *terminal* charges," etc.

**3 Annual Report Interstate Commerce Commission, p. 411.**

And §4387 of the United States Revised Statutes, in giving railroad companies a lien "for food, care, and custody," furnished to animals, in course of transportation, recognizes that the companies are entitled to make certain charges, in addition to "the customary *transportation* charges."

## XI.

This Court has said that "a railroad company is not a common carrier of live animals, in the same sense that it is a carrier of goods, *its responsibilities being in many respects* different."

**107 U. S., 107, Myrick vs. M. C. R. R. Co.**

Again, this Court said: "A railroad company, it is true, is not a carrier of live stock with the same responsibilities which attend it as a carrier of goods. The nature of the property, the inherent difficulties of its safe transportation, and the necessity of furnishing to the animals food and water, light and air, and protecting them from injuring each other, impose duties in many respects widely different from those devolving upon a mere carrier of goods. The most scrupulous care in the performance of his duties, will not always secure the carrier from loss." * * * * When the consignee is absent, or cannot, after reasonable inquiries, be found, and no one appears to represent him, the carrier cannot relieve himself by turning the animals loose. "He must place them in some suitable quarters, where

they can be properly fed and sheltered, under the charge of a competent person, as his agent, or for account, and at the expense of the owner. Turning them loose, without a keeper, or delivering them to one not entitled to receive them, would equally constitute a breach of duty, for which he could be held accountable."

123 U. S., 734, 735, North Penn. R. R. vs. Commercial Bank.

The United States Revised Statutes, § 4386 *et seq.*, enact that no railroad company, etc., "carrying or transporting cattle, sheep, swine, or other animals from one State to another, shall confine the same in cars * * * for a longer period than twenty-eight consecutive hours, without unloading the same for rest, water, and feeding, for a period of at least five consecutive hours," etc.

"Animals so unloaded, shall be properly fed and watered, during such rest, by the owner or person having the custody thereof, or in case of his default in so doing, then by the railroad company, etc., transporting the same, at the expense of the owner or person in custody thereof; and such company, etc., shall in such case have a lien upon such animals for food, care, and custody furnished, and shall not be liable for any detention of such animals."

## XII.

It will be seen that the "suitable and convenient means and facilities" which the Court below de-

cided that it is the duty of a railroad company to provide for the receipt and discharge of live stock, involve, according to the rules of responsibility as declared by this Court, and enacted by Congress, the following essentials:

*First.*—There must be "*shelter*" to protect the live stock from sun, rain, snow and storm; and the shelter must be so constructed as to admit an adequate supply of "*light* and *air*."

*Second.*—The shipments of different owners must be kept separate. This necessitates the construction of stock pens under the shelter; and those pens must be large enough to furnish a car load of cattle sufficient room for exercise and "*rest*." The pens must be connected by passage-ways leading to the platforms, and the platforms must be provided with chutes so as to guide the animals to and from the car doors.

*Third.*—The animals must be protected as far as possible "*from injuring each other.*" This requires the separation of the vicious animals from those that are inoffensive; and necessitates not only additional pens, but skilled and courageous employes, who are familiar with the habits of vicious animals, and know how to control them.

*Fourth.*—The animals must have "*water*," at the proper time and in proper quantities. They must not be allowed to suffer from thirst; and yet they must not be watered when overheated, nor allowed to drink too much.

The same may be said of "*feed.*" It must be of good quality, and given to them at the right time, and in the right quantity. The proper feeding and watering of live stock requires the employment of men of skill and experience, such as could not be expected of ordinary railroad employes.

*Fifth.*—Stock yards, or drove yards, from considerations of public health, are generally forced to locate in the suburbs of cities, at a distance from the passenger and general freight depots of a railroad company; and this fact necessitates having some one at the stock yard to represent the railroad company, to issue bills of lading, to receive shipments, and to care for the animals while waiting for trains to leave. There must also be some one at the stock yard to represent the railroad company in the delivery of live stock, to see that it is delivered to the real owner. To discharge these duties requires a very high degree of care and skill.

This Court affirmed a judgment against the North Pennsylvania Railroad Company for $34,271.41, because a stock yard company (which this Court held to be the agent of the railroad company) allowed some cattle to get into the possession of certain persons, who were not properly authorized by the consignees to receive them.

**123 U. S., 735–737, North Penn. R. R. vs. Commercial Bank.**

It is manifest that to construct adequate facilities for handling live stock, at such a point as Cov-

ington, Ky., must cost a very large sum of money. It is averred, and not denied, that the Covington Stock Yards Company expended $60,000 in the construction of its buildings and facilities. And, in addition, must be considered the daily heavy expense, for skilled employes, feed, water privileges, keeping the yards clean, etc.

It must also be remembered that all the cost and expense attendant upon stock yards, is occasioned alone by the live stock business. The Kentucky Central Railroad Company doubtless can, and does handle all of its inanimate freight, at its general freight depot in Covington; and it would have no use whatever for the stock yard's facilities, were it not for the live stock traffic.

## XIII.

As the railroad companies of the country must perform the duties as declared by this Court, and imposed by Congress, in regard to live stock, and as the performance of those duties necessarily involves large expenditures, the question arises, as to who should be required to pay the expense which the live stock business necessitates?

To hold, as the Court below did, that railroad companies are bound to provide suitable and convenient means and facilities for the receipt and discharge of live stock "free of any charge other than the customary *transportation* charges," is, in effect,

to hold that all the expense attendant upon the receipt and discharge of live stock, shall be borne by the railroad companies.

If the Courts will hold that railroad companies are not bound to accept live stock for carriage, then they can avoid the expense incident to the live stock traffic, by refusing to handle it. But the rapid transportation of live stock by railroad, has become a necessity of the age, and there is no probability that the Courts will ever allow the railroad companies to decline the live stock traffic.

If the railroad companies are to be compelled to carry the live stock traffic, they ought not to be compelled to bear the extra expense which is entailed by the receipt and discharge of live stock; and if that expense ought not to be thrown upon the railroad companies, by whom should it be borne?

It would be grossly inequitable to charge any part of the expense which is peculiar to the live stock business, upon the inanimate traffic of a railroad. Ordinary merchandise, and other inanimate traffic, require none of the expensive facilities which are necessary in handling live stock; and therefore the owners of merchandise, ought not to have their rates increased, in order to meet expenses which arise alone from the live stock traffic.

Manifestly the live stock traffic ought to pay all

such expense as necessarily arises in handling that traffic, and none of which is incurred in handling any other traffic.

## XIV.

If I am right in contending that the live stock traffic ought to bear all the expense which is peculiar to that traffic, it then becomes important to determine how that expense ought to be divided between the several classes of live stock shipments.

Live stock shipments may be classed as follows:

*First.*—Where cattle, etc., are taken to a stock yard, fed, and watered, and loaded upon cars, for shipment to some other point; or where they are received from some other point, and unloaded from cars, into the stock yard, and fed, and watered, and delivered to the consignee; or where they are in transit, and are unloaded from cars into the stock yard, where they are rested, fed, and watered, and reloaded into cars, to resume their journey.

All cattle, etc., in this class require loading or unloading, or both; and bedding, and feed, and water.

The contract of November 19, 1881, between the Kentucky Central Railroad Company and the Covington Stock Yards Company, regulates the prices to be paid for loading and unloading, which are

paid by the railroad company; and the prices for feeding and bedding, which are paid by the owners of live stock. No complaint is made that the charges for feeding and bedding are, in any degree, unreasonable or unjust.

*Second.*—The other class of live stock shipments includes all those where cattle, etc., are taken to a stock yard to be loaded upon cars for shipment to some other point, without being fed or watered at the stock yard; or where they are received from some other point, and unloaded from cars into the stock yard, and delivered to the consignee without being fed or watered.

In this class belong the shipments in which Keith & Wilson are interested, and the charges upon which are the subject of this controversy. They make no objection to the charge for loading or unloading, for that is paid by the railroad company; but they do object to being charged for "yardage." They contend that the charge for "yardage" is made for the mere privilege of passing their cattle to, and from the cars; and that they have the right to take their cattle to, or from the cars, without paying toll or tribute to that company, or to anyone else.

Their contention is extremely plausible at first blush, and it succeeded completely in the Court below; but, when analyzed, it will be found that its sole support is one of two assumptions, both of

which are wholly unfounded. It first assumes that the charge for "yardage" is included in, and covered by, the charge for loading, and unloading, which is paid to the stock yard company by the railroad company; or, if this be not so, it next assumes that the charge for "yardage" is a toll or tribute exacted for the privilege of taking their cattle to or from the cars.

As held by this Court in *North Penn. R. R. Co.* vs. *Commercial Bank*, 123 U. S., 735–737, *the stock yard company is the agent of the railroad company "for the custody and care"* of live stock; and it follows that the moment live stock are delivered in the stock yard, they are in the "care and custody" of the railroad company, and the railroad company is entitled to charge a reasonable compensation for the risk and responsibility incident to that custody.

Suppose that one hundred head of cattle are brought to the stock yard eight or ten hours before their train is scheduled to leave. They must either be taken into the stock yard, or be herded in the streets of Covington, to the danger of its citizens. If they are taken into the stock yard, the duty immediately devolves upon the railroad company, as said by this Court, to "protect them from injuring each other." To do this the stock yard employes must divide them up so as to separate the vicious from the harmless, and a number of stock pens have to be used for that purpose, for several hours, and until their train is ready to be loaded.

Or suppose that one hundred head of cattle are shipped from some other point consigned to Covington, and the train arrives on schedule time, at nine o'clock at night; the cattle are unloaded from the cars into the stock yard, where they remain until daylight. According to the ruling of this Court, the duty of the railroad company to "protect them from injuring each other," and to "provide them shelter" from the weather, continues after they have been unloaded into the stock yard, and until the consignee sees proper to call for them; which he may not do for twenty-four hours after their arrival.

Or suppose that one hundred head of cattle are brought to the stock yard to be shipped away, and after remaining there for half a day, the owner changes his mind, and concludes to ship by some other route, or to sell his cattle in Covington, or to take them back home.

According to our opponent's contention, neither the railroad company nor the stock yard company, in either of the cases supposed, could charge any thing at all.

The charge for "yardage" is made to cover the responsibility of the railroad company for the care and custody of the cattle, and for the shelter afforded them, while in the stock yard, before they are loaded into the cars for shipment, or after they are unloaded from the cars, and before they are

taken away by the consignee. The charge for "yardage" is therefore not covered by the charge for loading or unloading; and is properly made in addition to that charge.

The second assumption of our opponents is that the charge for "yardage" is a toll or tribute levied by the stock yard company upon shippers, for the mere privilege of taking their cattle to and from the cars of the railroad company. This assumption is equally unfounded.

The shippers do not take their cattle to or from the cars of the railroad company. They do not load their cattle into the cars, nor unload them from the cars.

All that the shippers do, is to deliver their cattle to the stock yard company, or to receive their cattle from that company, as the agent of the railroad company. When the cattle are in the possession of the stock yard company they are in the possession of the railroad company, as the stock yard company is its agent.

Under the contract of November 19, 1881, the stock yard company, as the agent of the railroad company, loads and unloads the cattle, and is paid for so doing by the railroad company. While the cattle are in the stock yard, or passing through it, they are in the "care and custody" of the railroad company; and, as before stated, the charge for

"yardage" is made for the responsibility growing out of that "care and custody," and for the "shelter," afforded the cattle; and therefore it is not levied, or exacted, as a toll, or tribute, for the privilege of reaching the cars.

## XV.

Much of the misapprehension in regard to the charge for "yardage," has doubtless arisen from attempting to apply to the live stock traffic, certain analogies drawn from the usages which obtain in handling inanimate traffic.

It is not customary for railroad companies to make any charge for the "care and custody" or "shelter" of merchandise, or other inanimate freight, while lying in depot, awaiting shipment; nor is it customary to make any charge while it is in depot awaiting delivery to consignee, unless the consignee delays an unreasonable time in taking it away. But the "care and custody" of live stock while in depot awaiting shipment or delivery, impose duties and responsibilities, "in many respects widely different from those devolving upon a mere carrier of goods." "The most scrupulous care in the performance of his duties, will not always secure the carrier of live stock from loss," occasioned by cattle "injuring each other" (123 *U. S.*, 734); but "a mere carrier of goods," while they are in depot, is liable to no loss, except from fire or theft.

Therefore the fact that railroad companies do not usually charge storage on inanimate freight, while in depot, furnishes no reason why they should not charge "yardage" on live stock, while herded in, or passing through stock yards, which are nothing but live stock depots.

XVI.

It may be said that, as Keith & Wilson's yards are near the Covington Stock Yards, they can deliver their cattle immediately before the departure of trains, and can remove them immediately upon the arrival of trains; that the only care or custody which the railroad company has of their cattle while in the stock yards, is in passing them to or from the cars; and, therefore, that no charge for yardage ought to be made against Keith & Wilson, even though it should be a proper charge against shippers of live stock in general.

This contention overlooks the fact that it is impossible for a carrier, in all cases, to proportion his charges exactly according to the service rendered in each particular case. It is usual to adopt a uniform charge, which is supposed to be an equitable average. The United States carries letters, under a certain weight, for a uniform postage, without regard to the distance they are carried. Passengers are carried at a uniform rate, without regard to the weight of the individuals carried; and on street railroads, and suburban trains, passengers pay a

uniform rate, without regard to distance. In these, and many similar instances, though the charge may appear excessive in a particular case, yet, when a general average of the business is struck, the charge may be shown to be entirely reasonable.

It is impracticable to grade the charge for "yardage" upon each shipment of cattle, so that it will be exactly proportioned to the time that each shipment is in the care and custody of the stock yard company. One shipment may pass directly through the yard, without being delayed at all; and the next shipment may remain in the yard twelve or twenty-four hours. It is impossible to get shippers to bring their cattle to the stock yard immediately before the departure of trains; and it is also impossible to get them to remove their cattle, immediately upon the arrival of trains. As an illustration of this fact, on June 26, 1886, a consignment of one cow and calf for Mr. Keith, arrived at Covington at 6:30 P.M., and notice thereof was immediately sent to him at his place of business; but he ordered the railroad agent, in writing, to keep them in the pens, until 7 o'clock next morning, *at the risk of the railroad*, and they were unloaded, and cared for by the railroad employes until he took them away the next day.

Trans., pp. 39, 40.

As the charge for "yardage" is made to cover the responsibility arising from the care and custody of cattle, the mere time during which they are in

the stock yard, furnishes no criterion as to what the charge ought to be. A vicious bull is as liable to gore another animal, the moment it enters the stock yard, as at any time afterwards; and skilled herdsmen, experienced in the control of vicious animals, must be kept always at hand, to prevent such injuries.

## XVII.

It may be said that though the charge for "yardage" might be unobjectionable if impartially applied, yet in this case, Keith & Wilson are the only persons who have been compelled to pay it; and therefore that an unjust discrimination has been practiced against them.

The Court below, in its final decree, did not predicate its action upon the ground that there had been any discrimination against Keith & Wilson. The final decree proceeds upon the broad ground that "yardage" cannot be legally charged against anyone.

Trans., p. 95.

There are a number of affidavits in the record, to the effect that "yardage" has not been charged against any one except Keith & Wilson; but that fact is explained by the superintendent of the stock yards, who says that there are no other persons who handle live stock at Covington, except Keith & Wilson. He says, however, that "yardage" would be charged against any other person, who should

use the Covington Stock Yards, like Keith & Wilson, to handle stock in Covington.

Trans., pp. 84–87.

## XVIII.

It may be said that though there may have been no discrimination against Keith & Wilson, and though a reasonable charge for "yardage" may be legal, yet the charge in this case is excessive, and unreasonable. The legal presumption is, that the charges of a carrier are reasonable; and there is no proof in this case that the "yardage" charge is unreasonable. The contest in the Court below was as to the legality, and not as to the reasonableness of the charge. If, however, it is desired, proof can be taken by either party, upon the reasonableness of the charge, if the case should be remanded.

## XIX.

It may be said that, though the railroad company may lawfully charge for yardage, yet the stock yard company has no right to do so. The Court below did not base its decree upon any distinction between the rights of the railroad company, and those of the stock yard company. The decree proceeded upon the broad ground that neither company had any right to make the charge.

This Court held, in *North Penn. Railroad* vs. *Com-*

*mercial Bank*, 123 U. S., 735–737, that a stock yard company is the agent of a railroad company; and if the railroad company may lawfully charge for "yardage," it may make the charge through the stock yard company, as its agent. If the shipper may be legally required to pay the charge, it is immaterial to him, whether he pays it to the principal direct, or to the agent.

## XX.

The Court below ordered that unless the Covington Stock Yards Company would consent that live stock for Keith & Wilson might be received and delivered through the Covington Stock Yards, free of "yardage," the railroad company, or the Receiver, should receive and deliver live stock for Keith & Wilson, at the platform and chute erected by them.

In the contract of November 19, 1881, between the Kentucky Central Railroad Company, and the Covington Stock Yards Company, said railroad company agreed to make the Covington Stock Yards its "depot for delivery of all its live stock," and during the term of said contract, that it would not "build, nor allow to be built," on its right of way, "any other depot, or yards, for the reception of live stock."

Trans., p. 15.

If the charge for "yardage" is illegal, the Court below should have ordered the railroad company,

and the stock yards company, to desist from making the charge, and to receive and deliver Keith & Wilson's shipments, at the Covington Stock Yards, free of any charge, other than the customary transportation charges. If the decree had stopped there, the Covington Stock Yards Company could have tested its correctness, as to the "yardage" charge, by an appeal. But the decree went further, and ordered that if said company would not consent for Keith & Wilson's shipments to be received and delivered in said company's yards free from the "yardage" charge, then said shipments should be received and delivered at the platform and chute erected by Keith & Wilson.

If said company had consented that said shipments might be received, and delivered in its yards, free from the "yardage" charge, then said company could not afterwards have recovered any thing from Keith & Wilson for "yardage," even though this Court should decide on this appeal, that the charge is legal and proper.

If said company declined, as it did do, to surrender its claim to "yardage," then it was deprived by the decree, of all the special benefits and advantages which it expected to realize under the contract of November 19, 1881, by having its yards made the depot for *all* the live stock handled at Covington; and Keith & Wilson were authorized by the decree to open another stock yard adjacent to the yards of said company.

If the contract of November 19, 1881, between the Kentucky Central Railroad Company and the Covington Stock Yards Company was illegal, or contrary to public policy, then the Court below had the right to order the railroad company and the Receiver to disregard it, and to receive and deliver live stock for Keith & Wilson, at their own platform and chute, whether the charge for "yardage" was proper or not.

But if said contract was legal, then, as it secured to said stock yards company the exclusive right to handle, for the railroad company, all live stock at Covington, the Court below, instead of ordering the railroad company and the Receiver to violate the contract, by delivering and receiving live stock at the platform and chute of Keith & Wilson, should have directed that the contract be carried out by receiving and delivering the stock at the Covington Stock Yards, but free from the charge of "yardage," if the Court was of opinion that such charge was not lawful.

The final decree, as rendered, therefore directly involves the question, as to whether a contract between a railroad company and a stock yard company, is legal, where it undertakes to stipulate that the stock yards of the latter company shall be the only depot of the railroad company, at a certain city, for the receipt and delivery of live stock?

Manifestly this is a question of great importance;

and one upon which the success of the live stock traffic of the country largely depends.

## XXI.

The requirements which the decisions of this Court, and the Acts of Congress, impose upon railroad companies as carriers of live stock, render it absolutely necessary that stock yards should be constructed and maintained at a great number of points in this country. High priced blooded stock may be carried in palace stock cars, where they can be fed, watered, and rested without stopping; but ordinary live stock cannot stand the expense of that mode of transportation, and it must rely upon the facilities furnished by stock yards. Stock yards must be constructed and maintained by the railroad companies, or by other corporations, or individuals. If the railroad companies could perform the service as efficiently and economically, as it can be done by others, most of the stock yards in the country would be owned and managed by the railroad companies. But the care and custody of live stock requires a high degree of peculiar skill, and practice, which ordinary railroad employes do not possess. In fact, the management of live stock is a separate business, entirely distinct from railroad transportation; and experience has shown, that the public can be better served in the live stock business, by the railroad companies employing those to attend to it, who are most familiar

with it. The consequence is that the live stock business, like the express business, and the sleeping car business, is generally intrusted by railroad companies to the care and management of other corporations. The large amount of capital required to construct and operate stock yards renders it impossible to find individuals who are able and willing to undertake the business; and even corporations are not willing to assume the risk involved in such investments, unless they are guaranteed certain exclusive rights, for a definite period of time. The buildings and fixtures of a stock yard company costing, as in this case, $60,000, are of no value for any other purpose; and if the profits, upon which the company is forced to depend, can be diverted to other establishments, the utter loss of the entire investment of the stock yard company, is the inevitable result.

This fact being well known, it is impossible for a railroad company to induce a stock yard company to organize and undertake to provide for the care and custody of its live stock business, unless the railroad company will, as in this case, agree to make the stock yard its only depot for the receipt and delivery of all live stock at that point.

The railroad company usually agrees to pay the stock yard company a certain sum for loading and unloading live stock, which, I assume, does not much exceed the actual cost of that service; for Mr. Keith himself says that the *profits* of a stock

yard are derived from feeding, selling, and weighing over the scales.

Trans., p 58.

If another establishment, as in this case, can have its live stock loaded and unloaded at the expense of the railroad company; if it can deprive the stock yard company of all profit arising from feeding, watering, and weighing the stock; and if it can force the stock yard company to care for all stock, while awaiting shipment, or delivery, without paying any thing for "yardage;" such other establishment can injure the stock yard company, beyond all computation. If stock yard companies cannot be protected in such exclusive rights as are guaranteed to the Covington Stock Yards Company in the contract of November 19, 1881, it is easy to see that it will be impossible for the railroad companies of the country to induce stock yard companies to undertake the care and custody of the live stock business; and the public will be deprived of the efficient service which it now enjoys.

## XXII.

The Court below, in an interlocutory decree entered July 23, 1886 (*Trans., p.* 41), referred to the case of *McCoy* vs. *C., I., St. L. & C. R. R. Co.*; 13 Fed. Rep., 3, decided in 1882. In that case, Judge Baxter held that "a railroad company cannot bind itself to deliver to a particular stock yard, all live

stock coming over its line to a certain point, but it is bound to transport over its road, and deliver to all stock yards at such point reached by its tracks or connections, all live stock consigned, or which the shippers desire to consign, to them, upon the same terms, and in the same manner as under like conditions it transports and delivers to their competitors." The reasoning upon which Judge Baxter arrived at his conclusion was as follows: That "the business of receiving, feeding, *dealing in*, and forwarding live stock, is legitimate and necessary. To do so on a scale commensurate with the trade of Cincinnati in that line, necessitates large expenditures in the erection of buildings and equipment of suitable yards; and being both legitimate and useful, everybody engaging in it *is entitled to equal facilities in the use of railroads* upon which they are largely dependent for success;" that "if the railroads centering at Cincinnati, or the officials who control them, are permitted to combine and establish a stock yard, as a private enterprise, and by contract make it *the* depot for the receipt and delivery of all the stock brought to, or carried through, the city, and withhold like accommodations from their competitors, they can suppress competition, and establish and maintain a monopoly in that particular department of trade, and subject the public to the payment of undue and unreasonable exactions for the services rendered."

13 Fed. Rep., p. 9.

There is no pretense in the case at bar that any

official of the Kentucky Central Railroad Company was ever interested as a stockholder, or otherwise, in the Covington Stock Yards Company; there is no pretense that the contract of November 19, 1881, between these companies, was the result of any combination, or conspiracy, to injure Keith or Wilson. On the contrary, Keith has been a stockholder in the Covington Stock Yards Company from its organization; and about the time said contract was made he voluntarily closed the Banner Stock Yard, which belonged to him; and leased it to the Covington Stock Yards Company, for a term of five years. During the existence of the lease, he did a commission business, buying and selling live stock; and he conducted that business, principally, at the Covington Stock Yards.

Any element of fraud, combination, or oppression, which may have appeared in the McCoy case, and may have tended to influence the decision in that case, is entirely absent from the case at bar. The contract which Mr. Keith now assails as illegal, was doubtless made with his full assent; and, as a stockholder in the Covington Stock Yards Company, he has participated in all the benefits and advantages which have arisen from said contract. There is nothing in this record to even raise a suspicion that said contract was entered into for the purpose of oppressing any one; on the contrary, it appears to have been made by the railroad company in perfect good faith; and for the sole purpose of providing for that company, suita-

ble and adequate means and facilities for handling its live stock business at Covington.

## XXIII.

There being no element of fraud, combination, or oppression, existing in this case, it presents the question pure, and simple, whether a railroad company can legally constitute one stock yard its only live stock depot, at a certain city, without being bound to receive and deliver live stock at every other stock yard that may be located upon the line of its road at or near that city. For if Keith & Wilson may lawfully require the Kentucky Central Railroad Company to receive and deliver live stock at their platform and chute, every other citizen of Covington who may wish to go into the live stock business, has the right to demand the same facilities; and the company may be required to receive and deliver live stock, at ten, or one hundred, different platforms at Covington.

The error in the reasoning of Judge Baxter in the McCoy case, when attempted to be applied to the facts in this case, consists in two assumptions.

*First.*—It assumes that Keith & Wilson, and the Covington Stock Yards Company are both engaged in the same kind of business; that they occupy the same relation to the Kentucky Central Railroad Company; and therefore that they are entitled to "equal facilities" in the use of its railroad.

*Second.*—It assumes that whenever two persons, or corporations, are engaged in the same business,

and occupy the same relation towards a railroad company, they are in all cases, and under all circumstances, "entitled to equal facilities" in the use of the railroad.

In the first place: Keith & Wilson are not engaged in the same business as the Covington Stock Yards Company.

Mr. Keith says that he is "now, and for many years last past, has been engaged in the business of *buying and selling live stock on commission, as well as on his own account.*"

Trans., p. 1.

The Covington Stock Yards Company says that its business is "to receive, ship, house, feed, and generally to care for the live stock of all others *shipped to or from Covington*, but *not to sell or buy any live stock*, or to transact any business other than as aforesaid."

Trans , p. 9.

Both parties own and operate stock yards; but Keith & Wilson use their stock yard to shelter and care for live stock, which is kept there "*to be bought and sold*," either on their own account, or for others; while the Covington Company uses its stock yard to shelter and care for the live stock of others "*shipped to or from Covington.*" Keith & Wilson have nothing to do with live stock after it has been delivered to the railroad company for shipment; and the Covington Stock Yards Company has nothing to do with it until it has been received by

that company, as agent for the railroad company, for shipment.

Where live stock has been shipped from other points to Covington, the Covington Stock Yards Company has nothing to do with it after it has been delivered to the consignee; and Keith & Wilson have nothing to do with it, until it has been delivered to the consignee.

In a word, so far from being engaged in the same business, the business of the one, begins precisely where the business of the other ends.

In the second place, Keith & Wilson do not occupy the same relation to the Kentucky Central Railroad Company, as does the Covington Stock Yards Company.

Keith & Wilson and their consignors, are the *patrons* or *customers* of the railroad company, and, as such, they are unquestionably "entitled to equal facilities" with all other *patrons* or *customers;* but the Covington Stock Yards Company is not a patron nor a customer of the railroad company; on the contrary, as held by this Court, it is simply the *agent* of that company.

123 U. S., 735, 737.

The Covington Stock Yards Company occupies, in regard to the live stock business, precisely the same relation to the railroad company, as the station freight agent at Covington, does in regard

to the inanimate freight of the railroad company, shipped to, or from that city.

Mr. Keith might with equal propriety complain of discrimination because he is not allowed to act as station freight agent of the company, with the same salary, rights, and privileges, as the individual who now fills that position.

If Mr. Keith, as a live stock merchant, may demand that his place of business shall be made a depot of the railroad company for the receipt and delivery of his traffic, all other merchants at Covington, whether engaged in the live stock traffic, or in the inanimate traffic, would have an equal right to demand that their stores, or warehouses, should be made depots of the railroad company.

The railroad company could thus be forced to have as many depots, as there are stores or warehouses at Covington, that can make physical connections by spur tracks, with the railroad; and at all of those depots, the railroad company must allow the proprietors to act as its agents; and the company must be bound by their acts, in the receipt and delivery of freight.

Another material distinction between the relation of the Covington Stock Yards Company, and the relation of Keith & Wilson to the Kentucky Central Railroad Company, is, that under the contract of November 19, 1881, the Covington company has obligated itself to keep and maintain a first-class stock yard at Covington,

for fifteen years, and not to charge exceeding certain reasonable rates during that time—whereas Keith & Wilson have not obligated themselves to keep a stock yard for any definite time; nor to charge any specified rates. If they succeed in this case in breaking down the Covington Stock Yards Company, they can sell out their own business the next day, and leave the railroad company and the shipping public, without any stock yard facilities at all at Covington.

## XXIV.

The second assumption in the reasoning of Judge Baxter, in the McCoy case, is, that whenever two or more persons or corporations are engaged in the same business, and occupy the same relation toward a railroad company, they are, in all cases, and under all circumstances, "entitled to equal facilities" in the use of the railroad.

This was the principle asserted in the Express cases, and Judge Baxter refers to the decisions in those cases at Circuit as authority for his ruling in the McCoy case. 13 *Fed. Rep.*, 9. But the Circuit decisions in the Express cases, were all reversed by this Court, in 117 U. S., 1.

In the case of *Pullman Car Company* vs. *M. P. R. R. Co.*, 115 U. S., 597, it was intimated in argument that it was "the duty of the railway company to haul the cars of the Pullman Company, because of the business in which the latter company was engaged, which consisted of hiring, or otherwise arranging with railway companies to use, its cars,

under written contracts for a term of years;" and it was alleged that it has "become indispensable in the conduct of the business of a railroad company to run on passenger trains, sleeping and drawing-room cars, with the conveniences usually afforded by such cars, for night travel;" but this Court said that it by no means followed "that the railway is, in law, obliged to arrange with the *Pullman* Company, for such accomodations," * * * that the business was always done under special written contracts; that those contracts must necessarily vary according to the special circumstances of each particular case; and that a Court of Chancery could not require the companies to enter into such a contract, for the furnishing and hauling of Pullman cars, as the Court might deem reasonable.

115 U. S., 597, 598.

In the Express cases the question was whether it was the duty of the railroad companies to furnish the Adams Express Company, or the Southern Express Company, "facilities for doing an express business upon their roads, the same in all respects as those they provide for themselves, or afford to any other express company" (117 *U. S.*, 20); and this Court said that the arrangement of the details for carrying express business on passenger trains "must necessarily be a matter of bargain, and it by no means follows that, because a railroad company can serve one express company in one way, it can as well serve another company, in the same way, and still perform its other obligations to the public in a satisfactory manner. The

car space that can be given to the express business on a passenger train is, to a certain extent, limited, and, as has been seen, that which is allotted to a particular carrier, must be, in a measure, under his exclusive control. No express company can do a successful business unless it is at all times reasonably sure of the means it requires for transportation. On important lines one company will at times fill all the space the railroad company can well allow for the business.

If this space had to be divided among several companies, there might be occasions when the public would be put to inconvenience by delays, which could otherwise be avoided. "*So long as the public are served to their reasonable satisfaction, it is a matter of no importance who serves them. The railroad company performs its whole duty to the public at large, and to each individual, when it affords the public all reasonable express accommodations. If this be done, the railroad company owes no duty to the public as to the particular agencies it shall select for that purpose.*"

117 U. S., 24, Express Cases.

To the same effect are the English cases of *Bedell* vs. *E. C. R'y Co.*, 26 L. J. C. P., 250, 2 C. B. N. S., 509; *Painter* vs. *L. B. & S. C. R'y*, 2 C. B. N. S., 702; *Ilfracombe, etc., Co.* vs. *L. & S. W. R'y Co.*, W. N., 1868, p. 289; *Ransome* vs. *E. C. R'y* (No. 2), 1 Nev. & Mac., 112; *Caterham R'y Co.* vs. *S. C. R'y*, 1 Nev. & Mac., 37.

## XXV.

Arrangements between railroad companies and stock yard companies require special contracts and